

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

REGINA PELLEGRINO, on behalf of herself, all
others similarly situated, and the general public,

Plaintiff,

v.

THE PROCTER & GAMBLE CO.,

Defendant.

Case No. 23-cv-10631

CLASS ACTION

COMPLAINT FOR CONSUMER FRAUD

DEMAND FOR JURY TRIAL

Plaintiff Regina Pellegrino, on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, brings this action against The Procter & Gamble Co. (“P&G”), and alleges the following upon her own knowledge, or where she lacks personal knowledge, upon information and belief, including the investigation of her counsel.

INTRODUCTION

1. P&G sells Metamucil, a psyllium fiber supplement, that it markets as healthy, safe, and effective at providing the touted health benefits, including “appetite control,” “healthy blood sugar levels,” and “digestive health” (the “Metamucil Products”). P&G’s health and safety representations are false or at least highly misleading, however, because the Metamucil Products contain dangerous amounts of lead, which P&G fails to disclose to consumers.

2. P&G’s representations that Metamucil Made with Real Sugar is effective at providing the touted health benefits of “appetite control,” “healthy blood sugar levels,” and “digestive health” are further false or at least highly misleading because scientific evidence demonstrates that, due to its added sugar content, Metamucil Made with Real Sugar actually *decreases* appetite control, *harms* blood sugar levels, and *damages* digestive health.

3. Plaintiff brings this action against P&G on behalf of herself, similarly situated Class Members, and the general public to enjoin P&G from deceptively marketing the Metamucil Products, and to recover compensation for injured Class Members.

JURISDICTION & VENUE

4. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from P&G. In addition, more than two-thirds of the members of the class reside in states other than the state in which P&G is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

5. The Court has personal jurisdiction over P&G as a result of P&G's substantial, continuous and systematic contacts with the State, and because P&G has purposely availed itself of the benefits and privileges of conducting business activities within the State, including by marketing, distributing, and selling the Metamucil Products in New York.

6. Venue is proper in this Southern District of New York pursuant to 28 U.S.C. § 1391(b) and (c), because P&G resides (*i.e.*, is subject to personal jurisdiction) in this district, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

7. Plaintiff Regina Pellegrino is a citizen of New York because she resides in Thornwood, New York and intends to remain there.

8. Defendant The Proctor & Gamble Company is an Ohio corporation with its principal place of business in Cincinnati, Ohio.

FACTS

I. P&G Markets Metamucil as Healthy, Safe, and Effective For Consumers 12 Years and Older

9. During at least the four years preceding the filing of this Complaint (the “Class Period”) P&G has manufactured, marketed, distributed, and sold Metamucil, a psyllium fiber supplement, in a variety of flavors and sizes.¹

10. The Metamucil Products’ labels suggest the products are generally healthy and safe for consumption, and provide specific health benefits, such as removing waste from the body, and providing appetite control, digestive health, and healthy blood sugar levels. Each Metamucil Product variety communicates these general and specific health messages through at least the following representations:

Metamucil Made with Real Sugar, Metamucil on-the-go, and Metamucil No Added Sweeteners

- “#1 Doctor Recommended Brand”
- “Helps Support: Appetite Control . . . Healthy Blood Sugar Levels [and] Digestive Health”

Metamucil Sugar Free

- “#1 Doctor Recommended Brand”
- “Helps Support: Appetite Control . . . Healthy Blood Sugar Levels [and] Digestive Health”

¹ The Metamucil Products challenged herein include all flavors, sizes, and varieties of (i) Metamucil Made with Real Sugar, (ii) Metamucil on-the-go!, (iii) Metamucil Sugar Free, (iv) Metamucil No Added Sweeteners, (v) Metamucil Premium Blend, and (vi) Metamucil Fiber + Collagen Peptides.

- “Better Choices for Life”

Metamucil Premium Blend

- “#1 Doctor Recommended Brand”
- “Helps Support: Appetite Control . . . Healthy Blood Sugar Levels [and] Digestive Health”
- “Premium Blend”
- “Better Choices for Life”

Metamucil Fiber + Collagen Peptides

- “#1 Doctor Recommended Brand”
- “Rejuvenation Blend For Daily Digestive Health”
- “supports digestive health”
- “supports joint structures”
- “add to your daily health routine”
- “traps and removes the waste that weighs you down, so you’ll feel lighter, more energetic, and rejuvenated”



11. As P&G knows, the “Doctor Recommended” statement on every Metamucil Product “adds credibility to [the] brand,” including the message that the Products are healthy, safe,

and effective at providing the touted health benefits, and “drives consumers to act,” with “82% of consumers say[ing] this claim is highly influential in their purchase decisions.”²

12. Tom Finn, president of P&G’s global personal healthcare business until June of 2020, called its use of the “Doctor Recommended” statement a “high-performing tactic[]” and “the most effective and durable way to trade in new consumers to a healthcare market.”³ He said he encouraged “a presence in the office” of doctors and noted “these engagement programs can help to achieve and sustain the all-important ‘No. 1 Doctor Recommended’ claim,” since “product usage initiated by a doctor’s recommendation [is] far more robust and much more durable than usage generated strictly from consumer advertising or PR.”⁴

13. On every Metamucil Product, the “Doctor Recommended” statement is shown in a circular “seal,” called out by a contrasting color, which is near medical advice regarding the product, such as the conditions under which someone should consult a doctor before use, how to use the product in combination with medicines, and signs of a serious condition that indicate when to stop product use and consult a doctor. The medical advice and “Doctor Recommended” statements are also adjacent to instructions on “How To Take Metamucil (For adults 12 years and older),” to achieve its supposed health benefits. Placement of the “Doctor Recommended” statement near medical advice and instructions for use further suggests and thus reinforces that

² See Linda Ruschau, “Why Your OTC Brand Should be Messaging in the Doctor’s Office,” Patient Point (Oct. 12, 2022), at <https://www.patientpoint.com/blog/otc-brand-messaging-doctor-office> (noting “Tom Finn, Retired President, Global Personal Health Care at Procter & Gamble,” discussing the “success they have had in gaining the coveted ‘#1 Doctor Recommended’ claim”).

³ Linda Ruschau and Tom Finn, “A Former P&G Exec Sees Prospects For Healthcare Brand Growth,” AdAge (Nov. 1, 2021), at <https://adage.com/article/PatientPoint/how-otc-brands-can-find-opportunities-doctors-office/2377051>.

⁴ *Id.*

the Metamucil Products have been evaluated and approved by doctors as healthy and safe when taken as directed.

14. Reasonable consumers therefore believe the “Doctor Recommended” representation means a substantial number of doctors, after receiving “professional education” on “the potential uses, proven benefits and proper administration”⁵ of the Metamucil Products, endorsed them as healthy and safe at the recommended intake levels.

15. P&G also represents, through use of one or more of the following statements on each Metamucil Product’s label and packaging, that the Products have been inspected and sealed to ensure each is safe for human consumption:

- “Do Not Use If Printed Seal Is Broken Or Missing”;
- “Tamper Evident: Do not use if printed seal under cap is missing or damaged”;
- “Individual Packets Sealed For Your Protection”;
- “Do Not Use If Package Is Torn”; and
- “Do Not Use If Printed Inner Seal is Broken or Missing.”

16. Research shows reasonable consumers view such tamper-evident packaging as reassurance that a product is free from toxic adulterants like lead.⁶ “Brands that utilize tamper-

⁵ See *id.*

⁶ See Misbah Syed, “Tamper-Evident Packaging: Enhancing Product Security and Consumer Trust (Aug. 29, 2023), https://www.linkedin.com/pulse/tamper-evident-packaging-enhancing-product-security-consumer-syed/?trk=article-ssr-frontend-pulse_more-articles_related-content-card [“Syed, Tamper-Evident Packaging”]; see also In Stock Labels, “Why Use Tamper-Evident Labels?” <https://instocklabels.com/why-use-tamper-evident-labels> (tamper evident labels “keep people safe and build trust in your company”); Etiquette, “The Great Power of Tamper-Evident Labels: Safeguarding Product Integrity and Consumer Trust (Aug. 10, 2023), <https://www.etiquette.co.uk/blog/the-great-power-of-tamper-evident-labels-safeguarding-product-integrity-and-consumer-trust> (The “added layer of security [provided by tamper-evident labels] protects the product and helps build trust with consumers, who can now be confident that the product they are purchasing is safe and authentic.”).

evident packaging demonstrate their commitment to consumer safety, enhancing their reputation and fostering trust among their customers” because it “protects consumers from ingesting or using products that have been compromised during storage or transit.”⁷ “Tamper-evident seals on food and beverage products,” like those on the Metamucil Products, “offer consumers peace of mind by guaranteeing the product’s freshness and safety.”⁸

17. Further demonstrating the importance of these safety representations to consumers, the tamper-evident label market was valued at \$13.21 Billion in 2021 and is projected to grow by 5.68% to \$21.54 Billion by 2030.⁹

18. Based on the challenged claims, individually and especially in combination, the average consumer would reasonably expect that the Metamucil Products are healthy and safe, and will provide the advertised health benefits when taken as directed.

19. Exemplars of the Metamucil Products’ packaging appear below.

[continued]

⁷ Syed, Tamper-Evident Packaging, *supra* n.6.

⁸ *Id.*

⁹ Verified Market Research, “Tamper Evidence Labels Market Size and Forecast” (Sept. 2023), *available at* <https://www.verifiedmarketresearch.com/product/tamper-evident-labels-market>.

Metamucil Made with Real Sugar



Metamucil on-the-go



Metamucil Sugar Free



Metamucil “No Added Sweeteners”



Metamucil Premium



Metamucil Fiber + Collagen Peptides



20. The Metamucil Product labeling also directs consumers to P&G's website, www.pg.com, and the product website, www.metamucil.com, both of which reinforce the message that the Metamucil Products are healthy, safe, and free from adulterants like lead.

21. P&G's website has a section dedicated to "Product Safety," where it reassures consumers that "We hold ourselves to the highest standard[.] For more than 185 years, your safety

and the safety of your world has been at the heart of what we do. That’s why we have a team of more than 500 scientists and professionals and a rigorous safety process to analyze every ingredient—before we ever consider putting it in one of our products.”¹⁰

22. P&G further tells consumers that “Safety is at the heart of everything we do. Before we market a new product, we go beyond regulatory compliance to ensure every ingredient’s safety through a four-step, science-based process. We use the same process as regulatory agencies around the world, like US FDA, EPA, the EU, the WHO, and others.”¹¹

23. In another section of its website dedicated to “Ingredients,” P&G reiterates that “Safety is our first ingredient. We know you want to know as much as you can about our products and their ingredients. That’s why we’re continuing to provide transparency around our ingredient innovation and safety science.”¹² P&G notes that “both natural and synthetic ingredients have a safe range and an unsafe range,” and reassures consumers it “define[s] the safe range of every ingredient” by “apply[ing] the same science-based approach as regulatory agencies around the world.”¹³ These statements are further reinforced by images on P&G’s website, like the one below.

[continued]

¹⁰ <https://us.pg.com/product-safety>

¹¹ *Id.*

¹² <https://us.pg.com/ingredients>

¹³ *Id.*



Ingredient choices and how we make them

Some people believe natural product ingredients are safer to use than man-made, synthetic ones. The reality is that it's not that simple; both natural and synthetic ingredients have a safe range and an unsafe range. Even basics like sunlight, oxygen, and water have safety limits. So what goes into choosing our product ingredients?

1) Safety. First we define the safe range for every ingredient, whether natural or synthetic. Then we apply the same science-based approach as regulatory agencies around the world.

24. Under the heading, “Ingredients we do not use,” P&G lists “Heavy metals: Arsenic, Lead, Chromium,” among other known toxins, below which it states, “We have strict product safety limits in place when any of these materials could be found in tiny amounts due to their natural (or background) presence in water, the environment, or as part of the manufacturing process.”¹⁴

25. The Metamucil Product website further reinforces P&G’s messaging that the Metamucil Products are healthy and safe. For example, the website has dozens of articles about health and wellness, including photos and videos of medical professionals in lab coats.¹⁵ In one

¹⁴ *Id.*

¹⁵ See <https://www.metamucil.com/en-us/articles>

article, P&G even tells consumers the Metamucil Products are safe to consume daily during pregnancy.¹⁶

26. The Metamucil website also has a section for “Frequently Asked Questions,” including specifically for “Health Care Providers,” which discusses Metamucil’s “Benefits, Dosage, [and] Side Effects[.]”¹⁷ The general FAQ reassures consumers Metamucil “is safe to take daily.”¹⁸

27. Through the Metamucil website and additional off-label advertising, including at least radio and digital advertisements, P&G also urges consumers to:

“Sign up for Metamucil’s Two-Week Challenge today to motivate yourself to add this healthy habit to your routine every day. The digestive system is so important to the overall health and wellbeing of the body. That’s why it’s key to support your gut health every day by giving it all the nutrients it needs. One nutrient—fiber—plays a key role in keeping the digestive system working at its best. . . . [W]hen taken daily, Metamucil can help trap and remove the waste that weighs you down[] so you can feel lighter and more energetic.[]”¹⁹

28. The purpose of the two-week challenge is to “help[] you get started with your daily Metamucil routine” and be “[w]ell on your way to making it a part of your daily health routine.”²⁰

¹⁶ <https://www.metamucil.com/en-us/articles/constipation/constipation-in-pregnancy> (“remedies for constipation during pregnancy” include “take Metamucil daily”).

¹⁷ <https://www.metamucil.com/en-us/faqs/hcp-faqs>

¹⁸ See <https://www.metamucil.com/en-us/faqs/metamucil-faqs> (answers to “Q: What is Metamucil used for?” and “Q: Is Metamucil a laxative?”).

¹⁹ See <https://www.metamucil.com/en-us/articles/metamucil-benefits/the-two-week-challenge-easiest-way-to-stay-regular-and-avoid>.

²⁰ *Id.*

To help with this, those that sign up for the challenge “get an email every day for two weeks with tips, tricks, and reminders to keep [them] going strong on [their] daily Metamucil.”²¹ P&G tells consumers it “believe[s] that Metamucil can make a difference in your overall health”²²

II. P&G Markets Metamucil Made With Real Sugar as Containing Predominantly Fiber

29. On the front of every Metamucil Made With Real Sugar, P&G conveys to consumers that although the product is “Made With Real Sugar,” it is predominantly comprised of psyllium fiber that will provide the touted health benefits.

30. The Metamucil brand name is the most prominent statement on the label of every Metamucil Made With Real Sugar, enclosed in a large circle with a fiber symbol and the description “PSYLLIUM FIBER SUPPLEMENT.”

31. The second most prominent element of the Metamucil Made With Real Sugar label is a panel stating, “4-in-1 FIBER HELPS SUPPORT: [] Appetite Control . . . Healthy Blood Sugar Levels[, and] Digestive Health,” with each health benefit called out by another fiber symbol.

32. Only after repeatedly and predominantly touting the fiber content, does P&G inform consumers that the product is also “made with REAL SUGAR.”

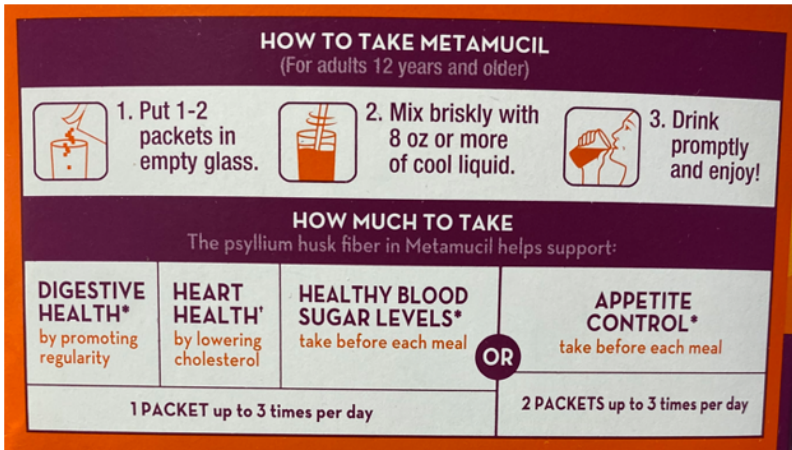
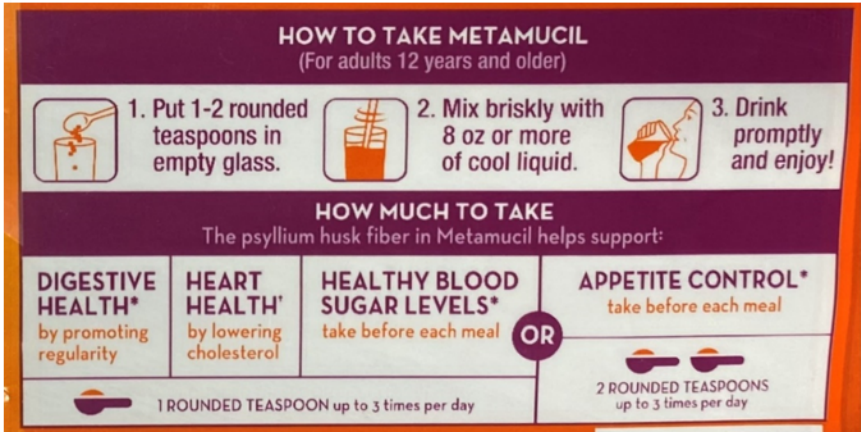
33. Consumers thus reasonably believe that Metamucil Made With Real Sugar is predominantly fiber, sweetened with small amounts of sugar, when the product is actually predominantly sugar (containing 16g of added sugar per serving), with a small amount of fiber (just 6g per serving). In sum, the product contains nearly three times more sugar than fiber.

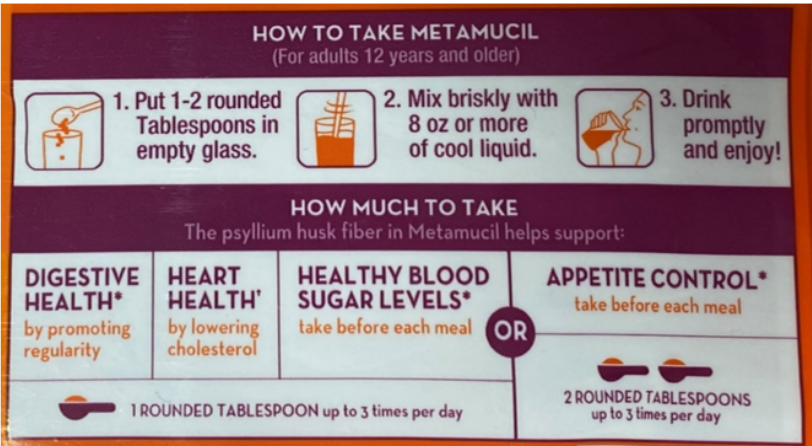


²¹ *Id.*

²² *Id.*

III. P&G Instructs Consumers to Take Metamucil Up to Three Times Per Day

34. On the back of each Metamucil Product label or packaging, P&G instructs Metamucil consumers, identified as “adults 12 years and older,” “How Much to Take” to achieve the advertised health benefits. Specifically, P&G instructs consumers to take 1 to 2 packets, rounded teaspoons, or rounded tablespoons (depending on variety), up to 3 times per day, as follows:

Product(s)	Instructions for Use	Daily Intake
Metamucil On-The-Go	<p>1 or 2 packets, up to 3 times per day (as shown below)</p>  <p>The label for Metamucil On-The-Go provides instructions for adults 12 years and older. It includes three steps: 1. Put 1-2 packets in empty glass. 2. Mix briskly with 8 oz or more of cool liquid. 3. Drink promptly and enjoy! Below this, it lists health benefits supported by psyllium husk fiber: Digestive Health (promoting regularity), Heart Health (lowering cholesterol), Healthy Blood Sugar Levels (take before each meal), and Appetite Control (take before each meal). It offers two options: 1 PACKET up to 3 times per day or 2 PACKETS up to 3 times per day.</p>	1 to 6 packets
Metamucil Sugar Free Metamucil No Added Sweetener Metamucil Made with Real Sugar (Unflavored)	<p>1 or 2 Rounded Teaspoons, up to 3 times per day (as shown below)</p>  <p>This section of the table covers three varieties of Metamucil: Sugar Free, No Added Sweetener, and Made with Real Sugar (Unflavored). The label for these varieties provides instructions for adults 12 years and older. It includes three steps: 1. Put 1-2 rounded teaspoons in empty glass. 2. Mix briskly with 8 oz or more of cool liquid. 3. Drink promptly and enjoy! Below this, it lists health benefits supported by psyllium husk fiber: Digestive Health (promoting regularity), Heart Health (lowering cholesterol), Healthy Blood Sugar Levels (take before each meal), and Appetite Control (take before each meal). It offers two options: 1 ROUNDED TEASPOON up to 3 times per day or 2 ROUNDED TEASPOONS up to 3 times per day.</p>	1 to 6 Rounded Teaspoons

Metamucil Made with Real Sugar (Orange and Berry flavored)	<p>1 or 2 Rounded Tablespoons, up to 3 times per day (as shown below)</p>  <p>HOW TO TAKE METAMUCIL (For adults 12 years and older)</p> <ol style="list-style-type: none">1. Put 1-2 rounded Tablespoons in empty glass.2. Mix briskly with 8 oz or more of cool liquid.3. Drink promptly and enjoy! <p>HOW MUCH TO TAKE The psyllium husk fiber in Metamucil helps support:</p> <table><tr><td>DIGESTIVE HEALTH* by promoting regularity</td><td>HEART HEALTH* by lowering cholesterol</td><td>HEALTHY BLOOD SUGAR LEVELS* take before each meal</td><td>APPETITE CONTROL* take before each meal</td></tr></table> <p>OR</p> <p>1 ROUNDED TABLESPOON up to 3 times per day</p> <p>2 ROUNDED TABLESPOONS up to 3 times per day</p>	DIGESTIVE HEALTH* by promoting regularity	HEART HEALTH* by lowering cholesterol	HEALTHY BLOOD SUGAR LEVELS* take before each meal	APPETITE CONTROL* take before each meal	1 to 6 Rounded Tablespoons
DIGESTIVE HEALTH* by promoting regularity	HEART HEALTH* by lowering cholesterol	HEALTHY BLOOD SUGAR LEVELS* take before each meal	APPETITE CONTROL* take before each meal			
Metamucil Fiber + Collagen Orange	<p>2 Heaping Teaspoons, up to 3 times per day (as shown below)</p>  <p>HOW TO TAKE METAMUCIL REJUVENATION BLEND (For adults 12 years and older)</p> <p>2 HEAPING teaspoons up to 3 times per day.</p> <ol style="list-style-type: none">1. Put powder in empty glass.2. Mix briskly with 8 oz or more of cool liquid.3. Drink promptly and enjoy! <p>FIBER + COLLAGEN peptides help support:</p> <ul style="list-style-type: none">Digestive Health*Joint Structures*	2 to 6 Heaping Teaspoons				
Metamucil Premium Blend	<p>1 or 2 Rounded Teaspoons, up to 3 times per day (as shown below)</p>  <p>HOW TO TAKE METAMUCIL (For adults 12 years and older)</p> <ol style="list-style-type: none">1 Put 1-2 rounded teaspoons in empty glass.2 Mix briskly with 8 oz or more of cool liquid.3 Drink promptly and enjoy! <p>HOW MUCH TO TAKE The psyllium husk fiber in Metamucil helps support:</p> <table><tr><td>DIGESTIVE HEALTH* by promoting regularity</td><td>HEART HEALTH* by lowering cholesterol</td><td>HEALTHY BLOOD SUGAR LEVELS* take before each meal</td><td>APPETITE CONTROL* take before each meal</td></tr></table> <p>OR</p> <p>1 ROUNDED TEASPOON up to 3 times per day</p> <p>2 ROUNDED TEASPOONS up to 3 times per day</p>	DIGESTIVE HEALTH* by promoting regularity	HEART HEALTH* by lowering cholesterol	HEALTHY BLOOD SUGAR LEVELS* take before each meal	APPETITE CONTROL* take before each meal	1 to 6 Rounded Teaspoons
DIGESTIVE HEALTH* by promoting regularity	HEART HEALTH* by lowering cholesterol	HEALTHY BLOOD SUGAR LEVELS* take before each meal	APPETITE CONTROL* take before each meal			

35. Further, P&G encourages consumers to take the above amounts of Metamucil on a daily basis, stating on each Metamucil Product's label that consumers should "start with one serving per day[and] gradually increase to desired *daily* intake."

36. The label of Metamucil on-the-go! also says the packets "are a portable way to get an extra serving of fiber every day." Similarly, Metamucil Fiber + Collagen Peptides is touted as a "Rejuvenation Blend For Daily Digestive Health," and its label encourages consumers to "add [it] to [their] daily health routine" and "Enjoy Rejuvenation Blend Daily!"

37. P&G also instructs consumers to "Mix this product with at least 8 oz (a full glass) of liquid," and warns that "Taking without enough liquid may cause choking." Consumers are thus instructed to "Put 1-2 packets [rounded teaspoons/rounded tablespoons] in [an] empty glass," "Mix briskly with 8oz or more of cool liquid," and then "Drink promptly and enjoy!" Because the Metamucil Products can only be consumed by mixing them into at least 8 ounces of liquid, Metamucil Made With Real Sugar is a sugar-sweetened beverage when consumed.²³

38. P&G also encourages the daily consumption of Metamucil on its website. For example, on its website FAQ, in response to the question "How much Metamucil should I take?" P&G tells consumers that "For best results, we recommend taking Metamucil daily." Further, in response to the question "Can I take Metamucil every day?" P&G responds "Yes! For best results,

²³ The Centers for Disease Control and Prevention defines "sugar-sweetened beverages" as "any liquids that are sweetened with various forms of added sugars like brown sugar, corn sweetener, corn syrup, dextrose, fructose, glucose, high-fructose corn syrup, honey, lactose, malt syrup, maltose, molasses, raw sugar, and sucrose." Centers for Disease Control and Prevention, Get the Facts: Sugar-Sweetened Beverages and Consumption, <https://www.cdc.gov/nutrition/data-statistics/sugar-sweetened-beverages-intake.html> (Apr. 11, 2022).

we recommend taking the dietary fiber supplement Metamucil every day. Metamucil fiber powders can be taken up to three times per day as a dietary fiber supplement.”²⁴

39. Daily use of Metamucil is also encouraged through P&G’s Metamucil Two-Week Challenge, which P&G says is designed to “mak[e] [Metamucil] a part of your daily health routine.” P&G tells consumers to “Keep Taking Metamucil Beyond the Two Weeks . . . every day, 365 days a year!” It further encourages them to “Keep up [their] daily psyllium fiber routine so [they] can feel what lighter feels like[] year-round.”²⁵

40. P&G instructing consumers to take the Metamucil Products multiple times daily reinforces the message that the products are healthy and safe. Reasonable consumers understand that daily consumption of unhealthy and dangerous foods should not be encouraged, but instead strictly limited. Further, reasonable consumers believe that dosage and use instructions on a “Doctor Recommended” product will result in healthy and safe consumption levels.

IV. P&G’s Representations and Omissions are Likely to Mislead Reasonable Consumers

A. P&G’s Health and Safety Representations are False and Misleading Because the Metamucil Products Contain Dangerous Amounts of Lead, which P&G Fails to Disclose

1. Lead Consumption is Harmful to Human Health

41. Lead is a heavy metal found in the Earth’s crust. It has no positive physiological role in the human body, but its harmful effects are manifold. At the cellular level, “heavy metals, including lead, create reactive radicals which damage cell structures, including DNA and cell

²⁴ Procter & Gamble, “Metamucil FAQs: Frequently Asked Questions,” *at* <https://www.metamucil.com/en-us/faqs/metamucil-faqs>.

²⁵ <https://www.metamucil.com/en-us/articles/metamucil-benefits/the-two-week-challenge-easiest-way-to-stay-regular-and-avoid>

membrane.”²⁶ For humans, lead is a cumulative toxicant that negatively affects multiple body systems, including the neurological, haematological, gastrointestinal, cardiovascular, immune, and renal systems.²⁷

42. Lead exposure is particularly harmful to children. At high levels of exposure, lead attacks the brain and central nervous system, and can cause convulsions, comas, and death. Moreover, children who survive lead poisoning may be left intellectually disabled or with behavioral disorders.

43. Even when lead exposure is not severe or obvious, its effects are pernicious. At lower levels of exposure, lead produces a spectrum of injuries across multiple body systems. For example, it can affect children’s brain development, resulting in lower IQ, and can cause behavioral changes such as reduced attention span, increased antisocial behavior, and reduced educational attainment. Lead exposure can also cause anemia, hypertension, renal impairment, immunotoxicity, toxicity to the reproductive organs, type 2 diabetes, and cancer. The damaging neurological and behavioral effects of lead are believed to be irreversible. For example, “Metal toxicants which affect the immune system may contribute to an increased incidence of autoimmune diseases, infectious diseases and cancer. . . . In some instances the immune system appears to be exquisitely sensitive to the toxic heavy metal lead as compared to other toxicological parameters.”²⁸

²⁶ “Lead” in Kosnett M.J. et al., *Poisoning and Drug Overdose*, McGraw Hill Professional (5th ed. 2006).

²⁷ World Health Organization, “Exposure to Lead: A Major Public Health Concern” (2d ed. 2021), *available at* <https://www.who.int/publications/i/item/9789240037656>.

²⁸ Mishra, K.P., “Lead exposure and its impact on immune system: a review,” *TOXICOLOGY*, Vol. 23, No. 6, at 969-72 (Sept. 2009) (emphasis added); *see also* Pukanha, K. et al., “The Immunotoxicity of Chronic Exposure to High Levels of Lead: An Ex Vivo Investigation,” *TOXICS*, Vol. 8, No. 3, at 56 (July 2020) (Concluding that “chronic high Pb exposure may cause

44. Lead in the body is distributed to the brain, liver, kidneys and bones, and stored in the teeth and bones, where it accumulates over time. In times of stress, however, “the body can mobilize lead stores, thereby increasing the level of lead in the blood.”²⁹ For example, lead that has accumulated in the bones is released into blood during pregnancy, exposing the fetus to lead. Thus, while the Metamucil Products are ostensibly for persons aged 12 and older, their use by adults can still result in lead exposure in children.

45. Its ability to accumulate in the body and lie in wait to be released into the blood without control and at unexpected times, makes lead particularly dangerous. Moreover, because lead accumulates in the body with repeated exposure, even “extremely low” levels of consistent lead exposure can, for example, “reduce the cognitive capacity of children.”³⁰ Moreover, as lead exposure increases, the range and severity of symptoms and effects also increase.

46. As a result, the World Health Organization has declared that “There is no level of exposure to lead that is known to be without harmful effects,” and “There is no known safe blood lead concentration.”³¹

47. According to the United Nations Children's Fund, known globally as UNICEF, “[l]ead is a highly poisonous element that is responsible for nearly 1.5 percent of annual global deaths – almost as many deaths as from HIV and AIDS, and more than from malaria” and, in fact,

a shift toward humoral immune response, together with a suppression of cellular immunity, thereby suggesting an elevation in cancer risk of Pb-exposed workers.”).

²⁹ Centers for Disease Control and Prevention, “What is the Biological Fate of Lead in the Body?” (June 12, 2019), https://www.atsdr.cdc.gov/cssem/leadtoxicity/biologic_fate.html.

³⁰ Needleman H.L., et al., “The longterm effects of exposure to low doses of lead in childhood—An 11-year follow-up report,” N.E.J. MED., Vol. 322 at 83-88 (1990).

³¹ World Health Organization, “Lead Poisoning” (Aug. 31, 2022), *available at* <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.

“the impact of lead on adults is so large that over 900,000 premature deaths per year are attributed to lead exposure.”³²

48. Moreover, to help consumers avoid cancer and reproductive system disorders, pursuant to Proposition 65, California has promulgated a maximum allowable dose level (MADL) for lead of just 0.5 µg (micrograms, sometimes expressed mcg) per day.³³

2. The Metamucil Products Contain Dangerous Amounts of Lead

49. Independent laboratory testing completed in July 2023 by an ISO-accredited laboratory demonstrates that the Metamucil Products contain high levels of lead, with each serving of each Metamucil Product containing, for example, more than the 0.5 µg MADL (*i.e.*, daily limit) under California’s Proposition 65.

Product	Lead (µg/serving)	Recommended Daily Intake	Daily Lead Intake	% of Prop 65 Daily Limit
Metamucil Sugar Free On-the-Go Orange Flavored	1.15	1 to 6 packets	1.15 - 6.90	230% - 1,380%
Metamucil Sugar Free Orange Flavored	1.68	1 to 6 rounded teaspoons	1.68 - 10.08	336% - 2,016%
Metamucil Sugar Free Berry Flavored	2.05	1 to 6 rounded teaspoons	2.05 - 12.30	410% - 2,460%
Metamucil No Added Sweeteners Unflavored	1.91	1 to 6 rounded teaspoons	1.91 - 11.46	382% - 2,292%
Metamucil Made with Real Sugar Orange Flavored	0.75	1 to 6 rounded tablespoons	0.75 - 4.48	149% - 895%
Metamucil Made with Real Sugar Unflavored	2.27	1 to 6 rounded teaspoons	2.27 - 13.62	454% - 2,724%

³² UNICEF, 7 things to know about lead exposure, <https://www.unicef.org/stories/7-thingsknow-about-lead-exposure>.

³³ Although Plaintiff notes this to help demonstrate the high amount of lead in Metamucil, Plaintiff does not bring any claims based on P&G’s violation of California’s Proposition 65.

Product	Lead (µg/serving)	Recommended Daily Intake	Daily Lead Intake	% of Prop 65 Daily Limit
Metamucil Fiber + Collagen Peptides Orange Flavored	0.34	2 to 6 heaping teaspoons	0.34 - 1.01	67.2% - 201.6%
Metamucil Premium Blend Orange Flavored	1.05	1 to 6 rounded teaspoons	1.05 - 6.30	210% - 1,260%

3. P&G Omits Material Information About the Presence of Lead in Metamucil, and its Related Health Harms

50. P&G has known that the Metamucil Products contain lead since at least March 2021 when Consumer Lab published a report concerning the lead content of various psyllium fiber supplements, showing up to 14.6 µg per serving in Metamucil Sugar Free Orange Flavored.

51. That P&G is responsible for the lead being present at such unreasonably dangerous levels in the Metamucil Products is also manifest in the fact that other brands of psyllium fiber tested at levels below that of the Metamucil Products.

52. For example, Consumer Labs found that Yerba Prima Psyllium Whole Husks contained at most 0.4 µg lead per serving, compared to Metamucil's 14.6 µg—more than 36 times the amount found in Yerba Prima. Even so, Yerba Prima places the warning required by Proposition 65 on its products, including its psyllium husks.

53. Omitting material information regarding the Products' lead content while its competitors, such as Yerba Prima, appropriately warned consumers of the lead content of competing psyllium fiber supplements, allowed P&G to charge more for the Metamucil Products than it otherwise could have, and further allowed P&G to obtain a greater share of the market than it otherwise would have absent its omissions.

54. As a public company and global healthcare brand with tens of billions in annual

sales, P&G has earned significant public trust that Metamucil is safe and fit for regular consumption. Reasonable consumers believe P&G would not sell products that are unsafe.

55. P&G knew or should have known it owed consumers a duty of care to adequately test the Metamucil Products for lead and other heavy metals. Had P&G done so, it would have known the Metamucil Products contain significant levels of lead.

56. P&G knew or should have known it could control the levels of lead and other heavy metals in the Metamucil Products by properly monitoring for their presence, sourcing ingredients with fewer heavy metals, adjusting the Metamucil Products' formulations to reduce or eliminate heavy metals, and improving its manufacturing processes to eliminate introduction of lead caused by P&G itself. In the interest of cost-savings, however, P&G failed to implement sufficient quality control systems and procedures in Metamucil's formulation and manufacturing.

57. According to P&G, it has "strict product safety limits in place when" heavy metals, including lead, "could be found in tiny amounts due to their natural (or background) presence in water, the environment, or as part of the manufacturing process," which apply to "any of [P&G's] formulated products," including its "health care" products like Metamucil.³⁴

58. P&G knew or should have known that Plaintiff and other Class Members would rely upon the packaging and advertising of Metamucil Products stating or suggesting that the products are healthy and safe when used as directed, and P&G intended for consumers to do so.

59. P&G knew or should have known that reasonable consumers would consume Metamucil Products regularly, up to three times each day, leading to repeated lead exposure, which accumulates in the body and its systems over time, even if each individual exposure is

³⁴ See <https://pgpro.com/en-us/brands/pg-pro-line/high-affinity-premium-durable-floor-finish>; see also <https://us.pg.com/ingredients> (further noting the strict product safety limits in place for heavy metals, including lead, in all P&G products).

“low.” Indeed, P&G encouraged such daily, repeated consumption behavior. Thus, the cumulative effect of consuming the Metamucil Products multiple times daily renders the amount of lead unreasonably dangerous to consumers.

60. While representing that the Metamucil Products are beneficial to health, P&G regularly omitted and continues to omit material information regarding the presence and countervailing detrimental health effects of the high levels of lead in the Metamucil Products and, in the case of Metamucil Made with Real Sugar, the high levels of added sugar in the product.

61. Nowhere on the label of Metamucil, nor in the off-label advertising for the Metamucil Products, including on its website, does P&G disclose to consumers the lead content of the products, nor even the possibility that consuming the products may expose consumers to lead. To the contrary, as noted in paragraph 24, P&G’s website expressly states that heavy metals are *not* in its products.

62. P&G also does not disclose on the label of Metamucil Made with Real Sugar the detrimental health consequences of consuming the product in amount and frequency recommended, including the increased likelihood of metabolic disease and other chronic illness.

63. P&G is under a duty to disclose this information to consumers because it is revealing some information about Metamucil—enough to suggest it is safe for consumption and beneficial to health—without revealing directly relevant information regarding the presence and harmful effects of lead and added sugar in the Metamucil Products described herein.

64. P&G is further under a duty to disclose this information because its deceptive omissions concern human health and safety, specifically the detrimental health consequences of consuming the Metamucil Products.

65. P&G is further under a duty to disclose this information because it was in a

superior position to know of the dangers presented by the lead and added sugar in Metamucil, as it is a large, sophisticated company that holds itself out as having expert knowledge regarding the health impact of consuming the Metamucil Products.

66. For example, P&G includes medical advice on the Metamucil Product labeling and includes a toll-free number where it answers questions about the Metamucil Products. Below the toll-free number, P&G directs consumers to its website, www.pg.com, and the Metamucil Product website, www.metamucil.com, both of which tout P&G's expertise. The Metamucil website includes, for example, additional medical advice and videos of medical professionals wearing lab coats and discussing the health benefits of consuming Metamucil. On its website, P&G claims to "apply the same science-based approach as regulatory agencies around the world" when making ingredient choices for its products, beneath an image of a scientist in a lab coat.

67. Finally, P&G is further under a duty to disclose this information because, including through the acts alleged herein, it actively concealed material facts not known to Plaintiff and other Class Members concerning lead and added sugar in the Metamucil Products, and the detrimental effects thereof.

4. The Metamucil Labeling is False and Misleading in Light of the Products' Lead Content

68. P&G's express statements and suggestions that Metamucil is healthy and safe for consumption as directed are false and misleading because the Metamucil Products' high lead content means the products are, in fact, not healthy, nor safe for regular consumption. To the contrary, regular consumption of the Metamucil Products in the repeated, daily manner P&G promotes exposes consumers to unsafe levels of lead. This concern is even more heightened for pregnant women and children aged 12 to 18 who use the Products.

69. Given the toxic effects of lead, the presence of unsafe levels of toxic heavy metals in the Metamucil Products is a material fact to reasonable consumers, including Plaintiff and other Class Members. If the presence, or the risk of presence of unsafe levels of toxic heavy metals in Metamucil Products were disclosed to Plaintiff and other Class Members, they would be unwilling to purchase the products, or to pay as much for the Metamucil Products as they paid. P&G's omission of Metamucil's lead content is therefore deceptive.

B. The Metamucil Made with Real Sugar Labeling is Likely to Deceive Reasonable Consumers Because the Product is Not Predominantly Fiber and Do Not Provide the Advertised Health Benefits

1. P&G Encourages Consumers to Supplement Their Already Excessive Sugar Consumption with a Product Containing Predominantly Sugar

70. Despite marketing Metamucil Made with Real Sugar as containing predominantly fiber, the product line³⁵ actually contains predominantly sugar, comprising 80% of its calories, and representing nearly three times the amount of fiber in the product.

71. P&G knows “the average American eats 22 teaspoons of sugar per day. That’s more than *triple* the recommended daily amount[.]”³⁶ Nevertheless, P&G encourages consumers to supplement their daily diet with an *additional* 12 to 48 grams of sugar daily (or approximately 3 to 12 teaspoons, assuming the product is taken three times per day, as P&G recommends), in the form of a sugar-sweetened beverage.

72. Further, P&G has stated that “along with the high amounts of sugar the average American is also consuming only 15 to 16 grams of fiber per day. That’s only about half of the

³⁵ Metamucil Made with Real Sugar comes in several flavors, as well as an “on-the-go” (packet) version.

³⁶ <https://www.youtube.com/watch?v=pTiA9D79ai0> (Metamucil advertisement).

daily requirements. . . . The sugar surplus and the fiber gap in today’s typical diet is a real problem. One reason this trend is so concerning is because high intake of sugar with low intake of fiber can make it difficult to maintain healthy blood sugar levels.”³⁷

73. Despite acknowledging the overconsumption of sugar and underconsumption of fiber among Americans, Metamucil Made with Real Sugar contains more sugar than fiber, thereby contributing to, rather than alleviating this problem. For example, a single rounded tablespoon serving of Metamucil Made With Real Sugar Orange flavor contains only 3 grams dietary fiber (12% of the recommended daily value), but 8 grams of added sugars (16% of the DV).

74. Notwithstanding Americans’ already excessive sugar consumption, P&G instructs consumers to ingest up to six rounded teaspoons or tablespoons daily (depending on variety) of Metamucil Made with Real Sugar, when doing so would cause many consumers to exceed—from their Metamucil intake alone—the daily added sugar intake levels recommended by authoritative health bodies to prevent chronic harm to health. This is particularly true for children since their recommended daily added sugar intake is lower than that of adults, but P&G instructs children 12 to 17 years old to take the same amount of Metamucil as adults.

2. Sugar-Sweetened Beverage Consumption Does Not Support Healthy Blood Sugar Levels

75. On the label of Metamucil Made With Real Sugar, P&G represents that the product “Helps Support: . . . Healthy Blood Sugar Levels” and instructs consumers that, for “Healthy Blood Sugar Levels,” “before each meal” they should take “1 Rounded Teaspoon” of unflavored and “1 Rounded Tablespoon” of orange-flavored Metamucil Made With Real Sugar “up to 3 times per day.” Following these instructions results in daily consumption of an additional 12 grams of added

³⁷ *Id.* (Metamucil advertisement)

sugar for Metamucil Made With Real Sugar Unflavored, and 24 grams of added sugar for Metamucil Made With Real Sugar Orange.

76. P&G’s healthy-blood-sugar labeling claims are false or at least highly misleading because following P&G’s instructions leads to the consumption of amounts of added sugar that generally cause *unhealthy* fluctuations in blood sugar levels, which is not counteracted by the small amount of fiber in Metamucil Made With Real Sugar. Moreover, over time, these blood sugar fluctuations caused by consuming the product can cause the body to be unable to control blood sugar levels due to insulin resistance, type 2 diabetes, and metabolic syndrome.

77. P&G acknowledges that “[o]ver time regularly eating large amounts of simple processed sugars can impact your body’s ability to maintain healthy blood sugar levels” and “[i]f your blood sugar levels are consistently elevated, you could be diagnosed with prediabetes.”³⁸

78. One scientific analysis showed an increase of just 150 calories per day in sugar consumption related to a 1.1% rise in diabetes prevalence by country, a statistically-significant increase of 11-fold when compared to that resulting from an increase of 150 total calories per day from non-sugar sources.³⁹ The researchers “noted that longer exposure to high sugar was associated with accentuated diabetes prevalence, while reduced sugar exposure was associated with decline in diabetes prevalence”⁴⁰ Nevertheless, through Metamucil Made With Real

³⁸ Procter & Gamble, “How Psyllium Maintain Healthy Blood Sugar Levels | Metamucil,” at <https://www.metamucil.com/en-us/articles/psyllium-fiber/how-psyllium-fiber-can-help-maintain-healthy-blood-sugar> [hereinafter “P&G, Healthy Blood Sugar Levels”].

³⁹ Basu, S., et al., “The Relationship of Sugar to Population-Level Diabetes Prevalence: An Econometric Analysis of Repeated Cross-Sectional Data,” 8(2) *PLOS Online* 1-8 (Feb. 27, 2013). The analysis also looked at other food categories, including fiber-containing foods, and found that none had a significant association with diabetes prevalence.

⁴⁰ *Id.*

Sugar’s labeling, P&G instructs and encourages consumers to supplement their already excessive sugar intake with an additional 48 to 196 calories from added sugar every day.

79. There are many other scientific studies, of which the average consumer is unaware, demonstrating that consuming drinks with added sugar directly harms blood sugar levels. One large meta-analysis that included data from 34,748 adults found, for example, that “after adjustment for age, sex, energy intake, BMI and other dietary covariates, each additional serving of SSB [sugar sweetened beverage] intake was associated with higher *fasting* glucose” blood levels.⁴¹ Higher fasting glucose leads to “higher fasting insulin”⁴² levels, which can cause insulin resistance. Thus, “Regular SSB [sugar-sweetened beverage] intake . . . is associated with a greater increase in insulin resistance and a higher risk of developing prediabetes in a group of middle-aged adults.”⁴³

80. The SSBs in the study included not only soft drinks, but others like energy drinks, lemonade, fruit punch, Start-brand breakfast drinks, sports drinks, and Tang, among others. Sports drinks, like Gatorade, contain approximately 21 grams of sugar per 12 oz. serving—less than the 24 grams a consumer drinks when taking Metamucil Made With Real Sugar Orange flavor as P&G instructs for supposedly “healthy blood sugar levels.”

⁴¹ McKeown, N.M. et al., “Sugar-Sweetened Beverage Intake Associations with Fasting Glucose and Insulin Concentrations Are Not Modified by Selected Genetic Variants in a ChREBP-FGF21 Pathway: A Meta-Analysis,” 61 *Diabetologia* 317–30 (2018) (emphasis added) [“McKeown, “Sugar-Sweetened Beverage Intake”].

⁴² *Id.*

⁴³ Ma, J. et al., “Sugar-Sweetened Beverage but Not Diet Soda Consumption Is Positively Associated with Progression of Insulin Resistance and Prediabetes,” 146 *J. Nutr.* 2544–50 (2016). This study looked at quartiles of sugar-sweetened beverage intake consisting of 0, 0.5, 2, and 6 servings *per week*, *see id.* at 2547, Table 1, and found “[t]he *linear trend* [of prediabetes incidence] across increasing quartile categories of SSBs was significant (P-trend < 0.001),” *id.* at 2546 (emphasis added).

81. Breakfast drinks vary somewhat in their sugar content, but many contain 10-12 grams,⁴⁴ less than or equal to the 12 grams of added sugar ingested when a consumer takes Metamucil Made With Real Sugar Unflavored as instructed for “healthy blood sugar levels.”

82. Moreover, whole grain intake was “quantified and used as [a] covariate[.]” in the analysis.⁴⁵ The findings regarding SSBs from the study thus account for fiber intake, and look at sugar levels similar to those consumed when taking Metamucil Made With Real Sugar as directed for supporting healthy blood sugar levels.

83. Another study “aimed to evaluate the relationship between the consumption of selected food groups and insulin resistance, with an emphasis on sugar-sweetened beverages (SSB),” and found that “daily consumption of SSB was related with increased [homeostasis model assessment-insulin resistance] in adolescents.”⁴⁶

84. A study examining “the association between sugar-sweetened beverage (SSB) consumption with biomarkers of insulin resistance (IR)” found that “[a]dolescents who consumed a greater amount of SSBs were more likely to have elevated fasting serum insulin[.]”⁴⁷

⁴⁴ For example, a Carnation Breakfast Essentials Original contains 11 grams of added sugar. *See* <https://www.carnationbreakfastessentials.com/products/carnation-breakfast-essentials-original-ready-drink>.

⁴⁵ McKeown, “Sugar-Sweetened Beverage Intake,” *supra* n.41.

⁴⁶ Kondaki, K. et al., “Daily Sugar-Sweetened Beverage Consumption and Insulin Resistance in European Adolescents,” 16 *Public Health Nutr.* 479-86 (2013).

⁴⁷ Lin, W.-T. et al., “Fructose-Rich Beverage Intake and Central Adiposity, Uric Acid, and Pediatric Insulin Resistance,” 171 *J. Pediatr.* 90–96 (2016). The SSBs in this study included “any type of SSBs, including sweetened teas, soft drinks, and fruit drinks,” some of which contained approximately 22g of sugar per 750 ml. “Compared with SSB nonusers,” consumers of those SSBs were found to have “higher HOMA1-IR and HOMA2-IR,” i.e. “elevated fasting serum insulin,” *id.* at 90, 93. The SSBs included drinks containing pearl tapioca (also known as boba), which contain some fiber and other nutrients. *See, e.g.,* U.S. Department of Agriculture FoodData Central, “Tapioca, pearl, dry,” <https://fdc.nal.usda.gov/fdc-app.html#/food-details/169717/nutrients>.

85. Another study found that “SSB supplementation led to a significant increase in fasting plasma glucose and a strong trend towards a reduction in insulin sensitivity in healthy lean individuals with low physical activity, who otherwise consumed less than 500 mL SSB per week.” The authors noted that “[i]n real life, SSB users are often exposed to similar sugar levels for years; making [their] in vitro results a good indication of what might occur in the long run.”⁴⁸

86. Similarly here, with respect to the Metamucil Made With Real Sugar Products, P&G instructs consumers to “take before each meal” on a daily basis.

87. In short, there is “a clear link between SSB consumption,” like the Metamucil Made With Real Sugar Products challenged here, “and risk of . . . type 2 diabetes.”⁴⁹ This means consuming the Metamucil Made With Real Sugar Products causes unhealthy rises and fluctuations in blood sugar levels, which, with time, will increase a consumer’s risk of becoming

⁴⁸ Sartor F et al., “Adaptive metabolic response to 4 weeks of sugar-sweetened beverage consumption in healthy, lightly active individuals and chronic high glucose availability in primary human myotubes.” 52(3) *Euro. J. Nutr.* 937-48 (Apr. 2013). *See also* Teshima N et al., “Effects of sugar-sweetened beverage intake on the development of type 2 diabetes mellitus in subjects with impaired glucose tolerance: the Mihama diabetes prevention study.” 61(1) *J. Nutr. Sci. Vitaminol.* 14-19 (2015) (“SSB intake correlated with the predisposition for developing T2DM, possibly by influencing body weight, insulin resistance, and the ability of the pancreatic beta cells to effectively compensate for the insulin resistance”).

⁴⁹ *See* Malik, Vasanti S., et al., “Sugar-Sweetened Beverages and Risk of Metabolic Syndrome and Type 2 Diabetes,” 33(11) *Diabetes Care*, 2477-83, at 2477, 2480-81 (November 2010) [hereinafter “Malik, 2010 Meta-Analysis”]. This Meta-Analysis included studies of various SSBs such as “soft drinks, carbonated soft drinks, fruitades, fruit drinks, sports drinks, energy and vitamin water drinks, sweetened iced tea, punch, cordials, squashes, and lemonade.” Ultimately, “[b]ased on data from [11] studies, including 310,819 participants and 15,043 cases of type 2 diabetes, individuals in the highest quantile of SSB intake (most often 1-2 servings/day) had a 26% greater risk of developing type 2 diabetes than those in the lowest quantile (none or <1 serving/month),” *id.* at 2477; *see id.* at 2478-79 (serving sizes were 8 or 12 oz, where indicated). One to two 8-ounce servings of Vitamin Water would contain approximately 10.4 to 20.8 grams of sugar, *see* <https://www.vitaminwater.com/products/vitaminwater/focus-kiwi-strawberry> (20 ounce bottle has 26 grams of sugar, so each ounce has 1.3 grams of sugar). That amount is similar to the intake resulting from P&G’s instructions for taking Metamucil Made With Real Sugar for “healthy blood sugar levels.”

diabetic or prediabetic, at which point the body loses its ability to regulate or maintain healthy blood sugar levels. Thus, rather than helping to support healthy blood sugar levels, regularly consuming Metamucil Made With Real Sugar as directed is likely to contribute to unhealthy blood sugar levels in both the short and long term.

88. Unsurprisingly, although the American Diabetes Association (ADA) endorses sugar-free versions of Metamucil, calling them “Better Choices for Life,” it does *not* endorse Metamucil Made With Real Sugar. Instead, the ADA advises Americans to “[a]void regular soda, fruit punch, sports drinks, sweet tea, and other sugary drinks. Choose water and calorie free drinks instead.”⁵⁰ For whole grains, the ADA tells consumers to “[l]ook for . . . grains with [] whole grains as the first ingredient.”⁵¹ By contrast, added sugar is the first ingredient in Metamucil Made With Real Sugar.

89. For “Preventing Type 2 Diabetes,” the Centers for Disease Control and Prevention, similarly recommends “Choos[ing] . . . more often: . . . Water and unsweetened beverages” and “Choos[ing] . . . less often: . . . Sugary drinks sugar as fruit juice, sports drinks, and soda” and “Processed foods such as packaged snacks, packaged meat, chips, granola bars, sweets, and fast food.”⁵² In other words, to prevent type 2 diabetes, the CDC advises against processed and sugary food and beverage choices, even where those foods and beverages provide other nutrients that

⁵⁰ American Diabetes Association, “What Can I Eat?” http://main.diabetes.org/dorg/PDFs/awareness-programs/hhm/what_can_i_eat-best_foods-American_Diabetes_Association.pdf. *See also* American Diabetes Association, “Healthy Food Choices Made Easy,” <https://diabetes.org/healthy-living/recipes-nutrition/healthy-food-choices-made-easy> (one of the four “keys to healthy eating” is “Less added sugar”).

⁵¹ *Id.*

⁵² Centers for Disease Control and Prevention, “On Your Way to Preventing Type 2 Diabetes,” *available at* <https://www.cdc.gov/diabetes/prevent-type-2/guide-prevent-type2-diabetes.html> (Apr. 6, 2022).

may be beneficial, such as the whole grains in a granola bar, or the protein in meat. Thus, despite Metamucil Made With Real Sugar containing some fiber, because it is primarily composed of processed sugar, it is the type of beverage CDC advises against for preventing type 2 diabetes.

90. Moreover, the soluble fiber from psyllium—such as that in Metamucil—does not improve or support healthy blood sugar levels as P&G claims. One study found, for example, that “less viscous soluble fiber sources such as the pectins and psyllium powder are not effective” for “management of the plasma glucose concentration in individuals with diabetes” and are “of little or no value in controlling the plasma glucose concentration in individuals with NIDDM.”⁵³

91. In short, consuming Metamucil Made With Real Sugar results in unhealthy changes in blood sugar levels and the inability to maintain healthy blood sugar levels. Thus, P&G’s claim that Metamucil “Helps Support: . . . Healthy Blood Sugar Levels” is false, or at least highly misleading.

3. Sugar-Sweetened Beverage Consumption Decreases Appetite Control

92. P&G advises consumers that for “Appetite Control[] take before each meal,” “2 Rounded Teaspoons” of Metamucil Made With Real Sugar Unflavored and “2 Rounded Tablespoons” of Metamucil Made with Real Sugar Orange flavored, “up to 3 times per day.” Following P&G’s instructions for “Appetite Control” results in consuming on a daily basis an additional 21g and 48g of added sugar for Metamucil Made With Real Sugar Unflavored and Orange, respectively, in SSB form.

⁵³ Nuttall, F., “Perspectives in Diabetes - Dietary Fiber in the Management of Diabetes,” 42 *Diabetes* 503-508 (April 1993).

93. Scientific evidence demonstrates that SSB consumption is associated with *decreased* appetite control. Therefore, P&G's representation that Metamucil Made With Real Sugar helps support appetite control is false, or at least highly misleading.

94. When someone eat carbohydrates, their blood sugar, or blood glucose level, goes up. This sends a signal to the pancreas to release the hormone, insulin. When someone eats and especially drinks something high in sugar, their blood sugar levels rise quickly. To bring blood sugar levels down, the body responds by releasing insulin into the blood, which permits the bodies' cells to take up the sugar, reducing its concentration in the blood. The higher one's blood sugar levels, the more insulin one's body releases. The drop in blood sugar levels in response to the release of insulin can be dramatic, sometimes even causing low blood sugar (hypoglycemia). In short, consuming high-sugar foods and beverages not only causes spikes in blood sugars, but corresponding and drastic dips as well.

95. This is significant because drops in blood sugar levels are a key regulator of hunger and appetite control. For example, a study of more than one thousand U.S. and U.K. participants looked at "postprandial glucose dips 2-3h after a meal" and found them to be a reliable predictor of postprandial hunger (*i.e.*, hunger levels after eating).⁵⁴ Participants consumed 8,624 standardized meals followed by 71,715 ad libitum meals and used continuous glucose monitors to record postprandial glycemia. Participants were asked to fast for 3 hours following the standardized breakfast meals and were then free to eat ad libitum. The study found that "[b]etween the standardised meals, the largest glucose dips followed the meal with the largest glucose rise," and "[t]he Glucose Dip_{2-3h} was statistically significantly associated with a change in Hunger_{2-3h} .

⁵⁴ See Wyatt, Patrick, et al., "Postprandial glycaemic dips predict appetite and energy intake in healthy individuals," 3(4) *Nat. Metab.* 523-29 (Apr. 1, 2021).

. . . Time until next meal . . . , Energy intake_{3-4h} . . . , [and] Energy intake_{24h}”⁵⁵ In other words, the more drastic the blood sugar dip, the hungrier participants felt and the more they ate.

96. The relationship between the dip in blood glucose levels and hunger and energy intake therefore may “explain why observational epidemiological . . . studies have shown strong correlations between foods . . . [s]uch as . . . sugar sweetened beverages . . . and weight gain – as consumption of such foods could lead to glucose dips and subsequent hunger.”⁵⁶

97. Another study, involving healthy young women, similarly found that “[t]he amount of sugar consumed at breakfast was correlated positively with the sensation of preprandial hunger and food intake at lunch.”⁵⁷ Thus, “a greater consumption of sugar at breakfast [] generate[s] a greater sensation of hunger during the preprandial period compared to the group consuming less sugar, which leads to greater ad libitum consumption of food.”⁵⁸ “[D]rinks sweetened with sugar[] are rapidly digested and absorbed and provoke a rapid increase in blood glucose, a fact that exacerbates hunger and favors hyperphagia, since these foods are unable to stimulate the mechanisms of satiety [].”⁵⁹

98. A literature review recently explained how sugar consumption also leads to decreased appetite control through feedback loops that involve the same reward pathways as those that cause addiction. Specifically, “[a]ppetite for sugar is propelled by changes in the morphology and activity of the reward systems reminiscent of addiction. Sugar intake also shifts the hunger-

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Penaforte, Fernanda R.O., et al., “Short-term impact of sugar consumption on hunger and ad libitum food intake in young women,” 7(2) *Nutr. Research & Practice* 77-81 (2013).

⁵⁸ *Id.*

⁵⁹ *Id.*

satiety continuum, facilitating initiations of consumption in the absence of energy needs and maintenance of feeding despite ingestion of large food loads that endanger [energy] homeostasis.”⁶⁰

99. Although humans have evolved to “rely on . . . feeding regulatory mechanisms that propel us to obtain high-energy foods,” “[i]n the current obesogenic environment in which readily available sugars are overconsumed to the point that endangers our health, these mechanisms are not an asset, but rather a basis of aberrant appetite and metabolic processing.”⁶¹

100. Because “the intake of sweet . . . diets lead[s] to addiction-like molecular and cellular changes in the reward system that propel habitual consumption,” and “hijacks the hunger-satiety continuum by shifting it toward perpetual hunger and weakened satiety,” “the current obesity ‘epidemic’ [] stems to a large extent from excessive consumption of highly palatable and caloric sugary foods”⁶²

101. Kathleen Page—who leads the Diabetes & Obesity Research Institute at USC and recently authored a study finding that sucrose (the type of sugar in Metamucil Made With Real Sugar) “produced lower increases in peripheral hormones involved in satiety signaling compared to oral glucose”⁶³—“said the takeaway for the general public isn’t to switch from one sweet drink to another but to try to reduce added sugar altogether”⁶⁴

⁶⁰ Olszewski, Pawel K., et al., “Excessive Consumption of Sugar: an Insatiable Drive for Reward,” 8 *Curr. Nutr. Rep.* 120-28 (2019).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Yunker, Alexander G., et al., “Appetite-Regulating Hormones Are Reduced After Oral Sucrose vs Glucose: Influence of Obesity, Insulin Resistance, and Sex,” 106(3) *J. Clin. Endocrinol. Metab.* 654-64 (Mar. 2021).

⁶⁴ Hopper, Leigh, “How Sucrose, the ‘real’ sugar commonly found in sodas, can disrupt your appetite,” USC News (Dec. 10, 2020).

102. In short, because scientific studies show that consuming high amounts of sugar like that in Metamucil Made With Real Sugar decreases appetite control, P&G's "Appetite Control" representations are false, or at least highly misleading.

103. Moreover, reasonable consumers would not expect that regular consumption of a Product marketed as "Support[ing] Appetite Control," is actually likely to promote weight gain and increase the risk of obesity. Yet scientific evidence has consistently demonstrated that consumption of sugar-sweetened beverages like Metamucil Made With Real Sugar does just that.

104. Findings from prospective cohort studies conducted in adults, taken in conjunction with results from short-term feeding trials, support a positive association between SSB consumption and weight gain, obesity, or both.⁶⁵

105. A meta-analysis by Harvard researchers evaluating change in Body Mass Index per increase in 1 serving of SSB per day found a significant positive association between beverage intake and weight gain.⁶⁶

106. An analysis of data for more than 50,000 women from the Nurses' Health Study during two 4-year periods showed that weight gain over a 4-year period was highest among women who increased their sugar-sweetened beverage consumption from 1 or fewer drinks per week, to 1 or more drinks per day (8.0 kg gain during the 2 periods), and smallest among women who decreased their consumption or maintained a low intake level (2.8 kg gain).⁶⁷

⁶⁵ Malik, V.S., et al., "Intake of sugar-sweetened beverages and weight gain: a systematic review," *American Journal of Clinical Nutrition*, Vol. 84, 274-88 (2006).

⁶⁶ Malik, V.S., et al., "Sugar-sweetened beverages and BMI in children and adolescents: reanalyses of a meta-analysis," *American Journal of Clinical Nutrition*, Vol. 29, 438-39 (2009).

⁶⁷ Schulze, M.B. et al., "Sugar-sweetened beverages, weight gain, and incidence of type 2 diabetes in young and middle-aged women," 292(8) *JAMA* 927-34 (2004).

107. A study of more than 40,000 African American women spanning over 10 years had similar results. After adjusting for confounding factors, those who increased sugar-sweetened beverage intake from less than 1 serving per week, to more than 1 serving per day, gained the most weight (6.8 kg), while women who decreased their intake gained the least (4.1 kg).⁶⁸

108. Experimental short-term feeding studies comparing SSB to artificially-sweetened beverages have illustrated that consumption of the former leads to greater weight gain. As demonstrated in the chart below, in one 10-week trial involving more than 40 men and women, the group that consumed daily supplements of sucrose (for 28% of total energy) increased body weight and fat mass by 1.6 kg for men and 1.3 kg for women, while the group that was supplemented with artificial sweeteners lost weight—1.0 kg for men and 0.3 kg for women.⁶⁹

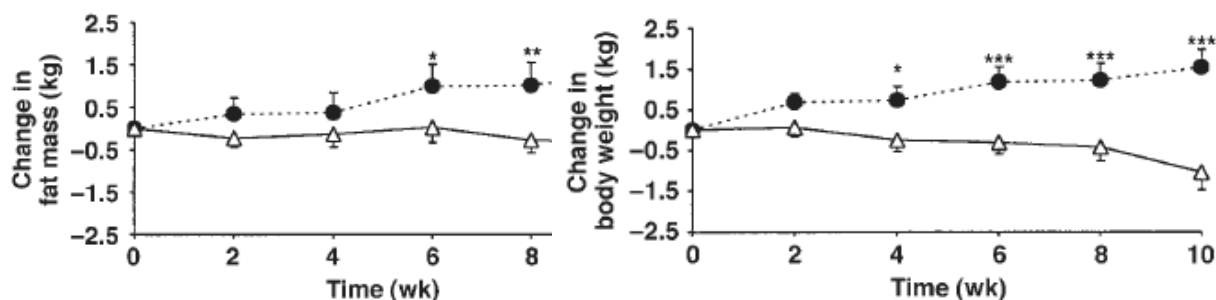


FIGURE 2. Mean (\pm SEM) changes in body weight, fat mass, and fat-free mass during an intervention in which overweight subjects consumed supplements containing either sucrose (\bullet ; $n = 21$) or artificial sweeteners (Δ ; $n = 20$) daily for 10 wk. The diet \times time interactions were significant for changes in body weight ($P < 0.0001$) and fat mass ($P < 0.05$) by analysis of variance with Tukey's post hoc tests. At specific time points for changes in body weight and fat mass, there were significant differences between the sucrose and sweetener groups: * $P < 0.05$, ** $P < 0.001$, and *** $P < 0.0001$ (general linear model with least squares means and adjustment for multiple comparisons).

⁶⁸ Palmer, J.R. et al., "Sugar-sweetened beverages and incidence of type 2 diabetes mellitus in African American women," 168(14) *Arch. Intern. Med.* 1487-92 (2018).

⁶⁹ Raben, A., et al., "Sucrose compared with artificial sweeteners: different effects on ad libitum food intake and body weight after 10 wk of supplementation in overweight subjects," *American Journal of Clinical Nutrition*, Vol. 76, 721-29 (2002) [hereinafter, "Raben, Sucrose vs. Artificial Sweeteners"].

4. Sugar-Sweetened Beverage Consumption Does Not Support Digestive Health

109. On the label of Metamucil Made With Real Sugar, P&G represents that the product “Helps Support: . . . Digestive Health” and instructs consumers that, for “Digestive Health,” they should take “1 Rounded Teaspoon” of Unflavored and “1 Rounded Tablespoon” of Orange flavored Metamucil Made With Real Sugar “up to 3 times per day.” Following these instructions results in the daily consumption of an additional 12 or 24 grams of added sugar for Metamucil Made With Real Sugar Unflavored and Orange, respectively.

110. Scientific evidence shows, however, that consuming SSB like Metamucil Made With Real Sugar negatively impacts digestive health, including by damaging the liver, which plays a crucial role in maintaining digestive health. P&G’s digestive health representations are therefore false, or at least highly misleading.

111. The liver makes and secretes bile and processes and purifies the blood containing newly-absorbed nutrients that are coming from the small intestine. Bile has two main purposes: to help absorb fats and to carry waste from the liver that cannot go through the kidneys.⁷⁰ The liver and the bile it produces are necessary for the digestive process.

112. Added sugar consumption, however, causes serious liver disease, including non-alcoholic fatty liver disease (NAFLD), characterized by excess fat build-up in the liver. Five percent of these cases develop into non-alcoholic steatohepatitis (NASH), scarring as the liver tries to heal its injuries, which gradually cuts off vital blood flow to the liver. About 25% of NASH patients progress to non-alcoholic liver cirrhosis, which requires a liver transplant or can

⁷⁰ University of Michigan Health, Michigan Medicine, “Your Digestive Health,” <https://www.uofmhealth.org/conditions-treatments/digestive-and-liver-health/your-digestive-system>.

lead to death.⁷¹

113. Studies that reflect real-world situations, where added sugars are consumed without strict dietary control (in other words, in the context of excess calories), show consistent evidence of harm across a range of conditions, including the infiltration of the liver with fat,⁷² which is associated with diabetes,⁷³ metabolic syndrome,⁷⁴ and cardiovascular disease.⁷⁵

114. Drinking SSB significantly increases fat deposition in the liver, muscles, and viscera (abdomen), along with multiple additional deleterious metabolic consequences.⁷⁶

115. A study in which people were fed extra candy and sugary drinks found a 27% increase in liver fat, along with signs of liver inflammation, which takes twice the weight loss to normalize.⁷⁷

116. In addition to showing damage to the liver from sugar consumption, studies have shown the reverse is true—when people who already consume sugar-sweetened beverages switch

⁷¹ Farrell, G.C., et al., “Nonalcoholic fatty liver disease: from steatosis to cirrhosis,” *Hepatology*, Vol. 433, No. 2 (Suppl. 1), S99-S112 (February 2006); Powell, E.E., et al., “The Natural History of Nonalcoholic Steatohepatitis: A Follow-up Study of Forty-two Patients for Up to 21 Years,” *Hepatology*, Vol. 11, No. 1 (1990).

⁷² Ha V, et al. *Do Fructose-Containing Sugars Lead to Adverse Health Consequences? Results of Recent Systematic Reviews and Meta-analyses*. *Advances Nutr.*, Vol. 6, No. 4, 504S–511S (2015).

⁷³ Mantovani A, Byrne CD, Bonora E, Targher G. *Nonalcoholic Fatty Liver Disease and Risk of Incident Type 2 Diabetes: A Meta-analysis*. *Diabetes Care.*, Vol. 41, No. 2, 372-82 (2018).

⁷⁴ Kim D, Touros A, Kim WR. *Nonalcoholic Fatty Liver Disease and Metabolic Syndrome*. *Clin Liver Dis.*, Vol. 22, No. 1, 133-40 (2018).

⁷⁵ Kovalic AJ, Satapathy SK. *The Role of Nonalcoholic Fatty Liver Disease on Cardiovascular Manifestations and Outcomes*. *Clin. Liver. Dis.*, Vol. 22, No. 1, 141-74 (2018).

⁷⁶ Maersk M, et al. *Sucrose-sweetened beverages increase fat storage in the liver, muscle, and visceral fat depot: a 6-mo randomized intervention study*. *Am. J. Clin. Nutr.*, Vol. 95, No. 2, 283-89 (2012).

⁷⁷ Sevastianova K, et al. *Effect of short-term carbohydrate overfeeding and long-term weight loss on liver fat in overweight humans*. *Am. J. Clin. Nutr.*, Vol. 96, No. 4, 727-34 (2012).

to beverages without sugar, the fat in their liver drops significantly.⁷⁸ Even patients already suffering from NAFLD showed improvement in their liver fat levels, liver inflammation, and insulin resistance after lowering their sugar intake.⁷⁹

117. Another study showed that fructose, one of the two components of the sucrose in Metamucil Made With Real Sugar, can fatten the liver even without weight gain. Participants were given fructose-sweetened beverages or beverages with the same amount of calories from complex carbohydrates (*i.e.*, starch) in a tightly-controlled environment to preclude weight changes. Even with no change in caloric intake, every single tested participant experienced an increase in liver fat on the high-fructose diet, proving fructose can exert harm beyond its caloric contribution.⁸⁰

118. Because pediatric researchers could not, due to ethical concerns, repeat this study by feeding excessive sugar to children, they instead gathered a group of children already eating large amounts of added sugars and iso-calorically replaced most of the sugar with starch.⁸¹ Within just 10 days, liver fat dropped an astounding 47%.⁸²

119. The low-sugar diets were so satiating that the researchers had difficulty persuading

⁷⁸ Campos V, et al. *Sugar- and artificially sweetened beverages and intrahepatic fat: A randomized controlled trial*. Obesity (Silver Spring), Vol. 23, No. 12, 2335-39 (2015).

⁷⁹ Volynets V, et al. *A moderate weight reduction through dietary intervention decreases hepatic fat content in patients with non-alcoholic fatty liver disease (NAFLD): a pilot study*. Eur. J. Nutr. 2013;52(2):527-35.

⁸⁰ Schwarz JM, et al. *Effect of a High-Fructose Weight-Maintaining Diet on Lipogenesis and Liver Fat*. J. Clin. Endocrinol. Metab., Vol. 100, No. 6, 2434-42 (2015).

⁸¹ Schwarz JM, et al. *Effects of Dietary Fructose Restriction on Liver Fat, De Novo Lipogenesis, and Insulin Kinetics in Children With Obesity*. Gastroenterology, Vol. 153, No. 3, 743-52 (2017) [hereinafter “Schwarz et al. *Effects of Dietary Fructose Restriction*”].

⁸² Vos MB, Goran MI. *Sugar, Sugar, Not So Sweet for the Liver*. Gastroenterology, Vol. 153, No. 3, 642-45 (2017).

the children to eat past comfort, and so weight was not able to be maintained, but the dramatic effect on liver fat would exceed that expected with the average two-pound weight loss, and was seen even in the subgroup of children that did not lose weight.⁸³ A more recent study on teens also found a significant improvement in fatty liver disease restricting free sugar intake to less than 3% of daily calories.⁸⁴

120. On a 2,000 calorie diet, 3% of daily calories amounts to 15 grams of added sugar. Taking Metamucil Made With Real Sugar as directed for digestive health results in the supplementation of consumers' regular diet with an additional 12 to 24 grams of sugar, making it all but impossible for consumers of the product to stay under this daily threshold.

121. A modeling simulation that included effects on fatty liver disease estimated that a 20% reduction in sugar consumption would save \$10 billion in discounted direct medical costs by averting the loss of more than 750,000 years of healthy life in the United States over 20 years. Complying with the American Heart Association's recommendation to cut added sugar consumption approximately in half might prevent the loss of another 1.6 million healthy years. The researchers cited as an obstacle the scientific uncertainty regarding the causal link between sugar and metabolic disease. "However," they conclude, "consensus on causality is now strong."⁸⁵

122. Because consuming the added sugar in Metamucil Made With Real Sugar harms digestive health by damaging the liver, P&G's representation that Metamucil Made With Real

⁸³ Schwarz et al. *The Effects of Free Sugars on the Liver*, *supra* n.81.

⁸⁴ Schwimmer JB, et al. *Effect of a low free sugar diet vs usual diet on nonalcoholic fatty liver disease in adolescent boys: a randomized clinical trial*. *JAMA*, Vol. 321, No. 3, 256-65 (2019).

⁸⁵ Vreman RA, Goodell AJ, Rodriguez LA, Porco TC, Lustig RH, Kahn JG. *Health and economic benefits of reducing sugar intake in the USA, including effects via non-alcoholic fatty liver disease: a microsimulation model*. *BMJ Open*, Vol. 7, No. 8 (2017).

Sugar “Helps Support: . . . Digestive Health” is false, or at least highly misleading.

5. P&G Deceptively Omits Material Information Regarding the Health Effects of Consuming Added Sugar

123. Even if the fiber in Metamucil Made with Real Sugar is capable of providing some benefits *absent* the large amount of added sugar in the Products, P&G deceptively omits material facts regarding the countervailing effects of consuming sugar on blood sugar, appetite control, and digestive health.

124. Because Metamucil Made with Real Sugar provides more sugar than fiber, it is deceptive for P&G to market Metamucil Made with Real Sugar as having the benefits associated with consuming fiber, without disclosing the countervailing detriments associated with consuming added sugar—facts reasonable consumers would consider material.

125. While representing that Metamucil Made with Real Sugar helps support healthy blood sugar levels, appetite control, and digestive health, P&G regularly and intentionally omits material information regarding the countervailing detrimental effects of the added sugars in Metamucil Made with Real Sugar on blood sugar levels, appetite control, and digestive health.

126. P&G is under a duty to disclose this information to consumers because it is revealing some information about Metamucil Made with Real Sugar—enough to suggest it helps support healthy blood sugar levels, appetite control, and digestive health—without revealing directly relevant information regarding the harmful effects of added sugar on blood sugar levels, appetite control, and digestive health.

127. P&G is under a duty to disclose this information because its deceptive omissions concern human health and safety, specifically the detrimental health consequences of consuming the Products.

128. P&G is under a duty to disclose this information because it was in a superior position to know of the dangers presented by the sugars in Metamucil Made with Real Sugar, as it is a large, sophisticated company that holds itself out as having expert knowledge regarding the impact of consuming Metamucil. For example, P&G provides information on its website regarding the “Benefits, Dosage, [and] Side Effects” of consuming Metamucil. The webpage—dedicated to providing information to “Healthcare Professionals”—discusses topics such as “Are there any drug interactions or restrictions with Metamucil?” Additionally, P&G sponsors and publishes articles about “Digestive Wellness,” “How [to] Maintain Healthy Blood Sugar Levels,” and “How to Stop Feeling Hungry Between Meals.”

129. On its YouTube channel, P&G shows videos of doctors wearing lab coats and stethoscopes touting the supposed benefits of Metamucil consumption. Notably, although the doctors in P&G’s videos do not specify which version of Metamucil is being discussed, using broad general language that could apply to all of P&G’s Metamucil products, when Metamucil products are shown in P&G’s doctor videos, only the sugar-free versions are shown. At no point in the videos, however, are viewers informed that the benefits being touted by the doctors are limited to any particular version of Metamucil, or that they do not apply to Metamucil Made With Real Sugar.

130. P&G is under a duty to disclose this information because it actively concealed material facts not known to Plaintiff and the Class.

6. Reasonable Consumers are Not Able to Understand a Product’s Physiological Impact From Reading its Supplement Facts and Ingredient List

131. As scientific evidence demonstrates, P&G’s “Healthy Blood Sugar Levels,”

“Appetite Control,” “Digestive Health,” and “Doctor Recommended” representations, and instructions for daily use up to three times per day, are false or at least highly misleading.

132. These representations are also misleading, and have the capacity, tendency, and likelihood to confuse or confound Plaintiff and other consumers acting reasonably because the average reasonable consumer would believe that Metamucil Made With Real Sugar provides the represented benefits—despite containing added sugar—believing the Products to be predominantly fiber, and not knowing the extent to which consuming the sugar in the Products adversely affects blood sugar levels, appetite control, and/or digestive health.

133. The average reasonable consumer is not intimately familiar with the scientific evidence regarding the health effects of consuming sugar or psyllium fiber. And there is no way for a consumer to know—by simply looking at the label and without reviewing the scientific evidence—whether or not Metamucil Made with Real Sugar provides the claimed benefits.

134. Because most consumers are unfamiliar with the details of scientific evidence showing how and at what levels added sugar consumption causes health harms, even the few consumers who review a product’s added sugar content are often unable to discern the physiological effect of that amount of sugar.⁸⁶ Accordingly, research consistently shows that even when consumers read a label’s nutrition information, most have difficulty deciphering and applying that information, and often draw incorrect conclusions based on that information.

135. For instance, the “mandated nutrition labels have been criticized for being too

⁸⁶ Research by the University of Minnesota’s Epidemiology Clinical Research Center involving a simulated grocery shopping exercise on a computer equipped with an eye-tracking camera shows that, even for the relatively small subset of consumers that told researchers they “almost always” look at a product’s sugar content (24%), only about 1% actually look beyond the calorie count to other components of the Nutrition Facts panel, such as sugar. *See* Graham & Jeffery, “Location, location, location: Eye-tracking evidence that consumers preferentially view prominently positioned nutrition information,” 111 *J. Am. Diet. Assoc.* 1704-711 (2011).

complex for many consumers to understand and use” because “[u]sing NFP labels requires not only being able to read and perform arithmetic but also—just as importantly—the ability to reason with words and numbers.”⁸⁷ Therefore, research shows that “a substantial proportion of consumers clearly struggle to effectively use the information contained in a nutrition label.”⁸⁸

136. Survey research demonstrates, for example, that consumers “[are] not very good at using the [nutrition] label to make mathematical calculations, evaluate false claims, or draw dietary implications about a product.”⁸⁹ Accordingly, the nutrition label is “an inadequate tool for helping people to plan diets” and “unlikely to contribute by itself to a better or more critical understanding of nutrition principles.”⁹⁰

137. In one survey, more than 3,000 adults viewed an ice cream nutrition label and then answered four questions that tested their ability to apply, understand, and interpret the nutrition information. Approximately 24% could not determine the calorie content of the full ice-cream container, 21% could not estimate the number of servings equal to 60g of carbohydrates, 42% could not estimate the effect on daily calorie intake of foregoing 1 serving, and 41% could not calculate the percentage daily value of calories in a single serving.⁹¹ Only 53.9% of respondents who had earned a 4-year college degree could correctly answer all four nutrition label questions.⁹²

⁸⁷ Persoskie A, Hennessy E, Nelson WL, “US Consumers’ Understanding of Nutrition Labels in 2013: The Importance of Health Literacy,” 14 *Prev. Chronic Dis.* 170066, 1-11 (2017) [hereinafter “Persoskie, US Consumers’ Understanding”].

⁸⁸ *Id.* (“Some studies have found that even high school graduates and college students lack the basic health literacy skills to effectively apply nutrition label information[].”).

⁸⁹ Levy & Fein, “Consumers’ ability to perform tasks using nutrition labels,” 30(4) *J. Nutr. Educ. & Behav.* 210-217 (1998).

⁹⁰ *Id.*

⁹¹ Persoskie, US Consumers’ Understanding, *supra* n.90.

⁹² *Id.*

138. Even “frequent use of nutrition labels does not promote understanding of [nutrient] levels.”⁹³

139. Moreover, marketing claims on foods can cause “[c]onsumers [to] perceive health differences even when two products have the same Nutrition Facts label[.]”⁹⁴

140. Not surprisingly, a 2017 Shopper Trends Study by Label Insights found that “67% of consumers say it is challenging to determine whether a food product meets their [dietary] needs simply by looking at the package label[.]”⁹⁵

141. The FDA, recognizing that “many consumers would like to know how to use th[e] [Nutrition Facts] information more effectively and easily,” recently published a guide on “How to Understand and Use the Nutrition Facts Label.”⁹⁶ It took the FDA nearly twelve pages to explain how to “make it easier for you to use the Nutrition Facts labels to make quick, informed food decisions to help you choose a healthy diet.”⁹⁷

142. The problem is so pervasive that the FDA created an “education campaign” designed to “help consumers, health care professionals, and educators learn how to use [the

⁹³ Soederberg Miller, Lisa M., et al., “The Effects of Nutrition Knowledge on Food Label Use: A Review of the Literature,” 92 *Appetite* 207-216 (2015) (citing Howlett, Elizabeth, et al., “How modification of the nutrition facts panel influences consumers at risk for heart disease: The case of trans fat,” 27(1) *J. Public Policy & Marketing* 83-97 (2008)).

⁹⁴ See International Food Information Council, “2021 Food & Health Survey,” at 31 (2021), available at <https://foodinsight.org/wp-content/uploads/2021/05/IFIC-2021-Food-and-Health-Survey.May-2021-1.pdf>.

⁹⁵ “Study Shows Labeling Often Confuses Consumers,” *Packaging Strategies* (Mar. 30, 2017), available at <https://www.packagingstrategies.com/articles/94081-study-shows-labeling-often-confuses-consumers> (citing Label Insight 2017 Shopper Trends Study, available at <https://tinyurl.com/ms4fwfmn>).

⁹⁶ FDA, “How to Understand and Use the Nutrition Facts Label,” (last updated Feb. 25, 2022) available at <https://www.fda.gov/food/new-nutrition-facts-label/how-understand-and-use-nutrition-facts-label#top>.

⁹⁷ *Id.*

Nutrition Facts Label] as a tool for maintaining healthy dietary practices”—thus recognizing the current widespread confusion, even among “health care professionals,” in how to properly use the Nutrition Facts to make healthy choices.⁹⁸

143. Another major problem is that “sugar interests have . . . intentionally and actively worked for more than 40 years to suppress the scientific evidence linking sugar consumption to negative health consequences.”⁹⁹

144. As one article described it, “[i]nternal US sugar industry documents recently revealed the part that the industry, in conspiracy with scientists, and by lobbying public institutions, played in the 1960s and 1970s in determining that public health policy to reduce mortality from coronary heart disease should focus on saturated fats as the main cause of such disease whilst ignoring the impact of sugar consumption.”¹⁰⁰

145. Documents that became public during the course of a lawsuit between rival sugar industry groups revealed that the sugar industry has engaged in “unscrupulous strategies reminiscent of the tobacco and fossil fuel industries, including manufacturing doubt about the science and engaging in deliberate and elaborate misinformation campaigns.”¹⁰¹

⁹⁸ See FDA, “The New Nutrition Facts Label—What’s in it for you?” (last updated Apr. 13, 2022) *available at* <https://www.fda.gov/food/nutrition-education-resources-materials/new-nutrition-facts-label>.

⁹⁹ Gretchen Goldman et al., Union of Concerned Scientists, “Industry Tactics to Obscure the Science: How Industry Obscures Science and Undermines Public Health Policy on Sugar” (2014) [hereinafter “Goldman, Industry Tactics”]. *See also* Kearns CE, et al., “Sugar Industry and Coronary Heart Disease Research: A Historical Analysis of Internal Industry Documents,” 176(11) *JAMA Intern. Med.* 1680-685(2016).

¹⁰⁰ Alejandro Calvillo, NCD Alliance, Public health sequestered for 50 years by sugar industry, (Sept. 29, 2016), *available at* <https://ncdalliance.org/news-events/blog/new-blog-public-health-sequestered-for-50-years>.

¹⁰¹ Goldman, Industry Tactics, *supra* n.99.

146. The Union of Concerned Scientists identified five main tactics used by the sugar industry. These include:

Tactic 1: Attacking the Science

- Planning to “bury the data” if the science is inconvenient
- Threatening to suspend funding to the World Health Organization
- Seeking to discredit scientific findings by intimidating the study authors ...

Tactic 2: Spreading Misinformation

- Emphasizing unknowns while ignoring what is known
- Repeating untruthful claims
- Manufacturing bogus scientific claims
- Widely publishing claims that have not been subjected to scientific scrutiny

Tactic 3: Deploying industry scientists

- Exploiting science communication and blogging communities
- Failing to disclose scientists’ conflicts of interest
- Hijacking scientific language for product promotion

Tactic 4: Influencing academia

- Buying credibility through academic scientists
- Funding research to support their preconceived positions
- Paying academic scientists to persuade other scientists of sugar interests’ positions

Tactic 5: Undermining policy

- Pouring lobbying dollars into sugar policy debates at the federal, state, and local levels

- Supporting political candidates in influential positions
- Influencing rule making at federal agencies

147. As we now know, sugar interests secretly created an immense amount of disinformation, making it hard for ordinary consumers to understand the harms of sugar such that simply knowing the amount of sugar in a food is not sufficient for most consumers to understand the negative impact it may have on health.

148. One of the main goals of such disinformation campaigns is to “manufacture doubt” so that consumers do not know what to believe.¹⁰² Survey evidence demonstrates this problem is prevalent regarding nutrition. For example, a “Key Finding” of the 2018 Food & Health Survey from the International Food Information Council (IFIC), which surveyed approximately 1,000 American consumers to understand their perceptions, beliefs and behaviors around food and food purchasing decisions, was that 80% of consumers encountered contradictory information about food and nutrition in their search for nutritious foods, making “consumer confusion . . . a prevalent issue.”¹⁰³ Another key finding was that “[c]ontext can influence the consumer’s judgement of healthfulness, even when the nutritional facts are the same[.]”¹⁰⁴

149. Thus, a review of Metamucil Made with Real Sugar’s supplement information is unlikely to sufficiently inform consumers regarding the Product’s inability to deliver the

¹⁰² See Goldberg RF and Vandenberg LN, “The science of spin: targeted strategies to manufacture doubt with detrimental effects on environmental and public health,” 20(33) *Environ. Health* 1-11 (Mar. 2021) (describing how “[n]umerous groups, such as the tobacco industry, have deliberately altered and misrepresented knowable facts and empirical evidence to promote an agenda, often for monetary benefit,” including the sugar industry); see also Goldberg RF and Vandenberg LN, “Distract, display, disrupt: examples of manufactured doubt from five industries,” 34(4) *Rev Environ Health* 349-63 (2019).

¹⁰³ IFIC, “2018 Food & Health Survey,” at pp. 3, 5, available at <https://foodinsight.org/wp-content/uploads/2018/05/2018-FHS-Report-FINAL.pdf>.

¹⁰⁴ *Id.*

promised health benefits because the vast majority of consumers do not have the expertise needed to accurately determine a food's physiological effect from a review of its included nutrients.

150. Further, Metamucil's Supplement Facts are contrary to the AHA's recommendation that in order to avoid negative health effects, added sugar consumption should be well below the 50-gram limit set by the FDA and reflected in the Supplement Fact panel.

151. The American Heart Association recommends, for good health, restricting added sugar to 5% or less of daily calories. Based on the average caloric needs, this equates to up to 25 grams for children 9 to 18 years old and women, and 38 grams for men. The one-size-fits-all 50 gram daily added sugar limit listed on Metamucil's Supplement Facts, in contrast, is based on a limit of 10% of calories from added sugar and unrealistically assumes a uniform 2,000 calorie diet based on that long-standing norm.

152. The FDA's Supplement Facts also omit that authoritative health bodies recommend avoiding altogether sugar sweetened beverages. For example, the Heart and Stroke Foundation, in explaining "healthy eating basics," recommends "avoid[ing] sugary drinks."¹⁰⁵

153. The USDA's Dietary Guidelines for Americans 2020-2025 state that "[s]ugar-sweetened beverages . . . are not necessary in the child or adolescent diet nor are they a component of the USDA Dietary Patterns."¹⁰⁶ And "[m]ost adults' diets . . . cannot accommodate excess calories from sweetened beverages."¹⁰⁷

¹⁰⁵ Heart and Stroke Foundation, Healthy eating basics, <https://www.heartandstroke.ca/healthy-living/healthy-eating/healthy-eating-basics>.

¹⁰⁶ U.S. Department of Agriculture, Dietary Guidelines for Americans, 2020-2025 at 87, available at <https://www.dietaryguidelines.gov/resources/2020-2025-dietary-guidelines-online-materials>.

¹⁰⁷ *Id.* at 103.

154. Additionally, the FDA has proposed new criteria for making “healthy” nutrient content claims on foods. Although the challenged claims are not healthy nutrient content claims under 21 C.F.R. § 101.65(d), the FDA’s comments in rulemaking nevertheless provide insight into the FDA’s position on what constitutes a “healthy” food item.

155. The FDA proposed “update[ing] the definition for the implied nutrient content claim ‘healthy’ to be consistent with current nutrition science and Federal dietary guidance, especially the Dietary Guidelines for Americans (Dietary Guidelines), regarding how consumers can maintain healthy dietary practices.”¹⁰⁸ In doing so, the FDA explained, “[e]vidence shows” that “a diet low in added sugars helps individuals achieve a healthy dietary pattern” such that “it is critical that foods” labeled as “‘healthy’ do not contribute to a dietary pattern that contains added sugars over the recommended levels.”¹⁰⁹

156. In order to achieve this, the FDA has proposed “a limit on the amount of added sugars in foods bearing the nutrient content claim ‘healthy’ to help consumers choose foods that will contribute to a healthy dietary pattern that is lower in added sugars, consistent with current nutrition science and Federal dietary guidance.”¹¹⁰ That limit, “[f]or individual foods,” was found to be “≤5 percent of the DV [for added sugar] per [Reference Amount Customarily Consumed],” which is “≤2 ½ g for adults and children 4 years of age and older[.]”¹¹¹ In sum, FDA has concluded the scientific evidence supports limiting added sugar to just 5% of calories, or 2.5 grams, in individual foods marketed as healthy due to their nutrient content.

¹⁰⁸ 87 Fed. Reg. 59168, 59168 (Sept. 29, 2022).

¹⁰⁹ *Id.* at 59180.

¹¹⁰ *Id.*

¹¹¹ *Id.*

157. Thus, while the Supplement Facts on Metamucil Made With Real Sugar provides consumers with some limited information about its sugar, it is not even fully reflective of the FDA’s own position on the appropriate limit for added sugar in healthy food items, which it has expressed should be based on 5%, not 10% of calories.

158. Moreover, in addition to scientific evidence, FDA also considers in its rulemaking comments submitted by food industry members and trade organizations. This means the FDA is susceptible to pressure from industry groups attempting to obscure the science on the health effects of added sugar consumption.

159. P&G is a member of the Consumer Brands Association (CBA),¹¹² which, on February 16, 2023, submitted a comment to the FDA that calls the proposed 2.5 gram added sugar limit for healthy nutrient content claims “overly stringent,” claiming “FDA’s restrictive approach to added sugars content in foods described as healthy is unwarranted and outside FDA’s authority given the lack of scientific consensus on the relationship between sugar intake and diet related disease.”¹¹³ CBA asked FDA to instead adopt a definition that would allow up to 15 grams of added sugar per serving size¹¹⁴—50% more added sugar than the 10 grams in an Original Glazed Krispy Kreme Doughnut.¹¹⁵

¹¹² See P&G 2022 Trade Association Dues, *available at* <https://us.pg.com/structure-and-governance/our-political-involvement/> (showing P&G paid \$750,000 in 2022 dues to CBA, \$120,000 of which went to “lobbying or political expenditures”).

¹¹³ Comment to Food and Drug Administration from the Consumer Brands Association Re: Food Labeling: Nutrient Content Claims; Definition of Term “Healthy,” Docket No. FDA-2016-D-2335 (Feb. 16, 2023), at p.2, *available at* <https://www.regulations.gov/comment/FDA-2016-D-2335-1548>.

¹¹⁴ *Id.* at p.12.

¹¹⁵ Krispy Kreme Original Glazed® Doughnut nutrition facts, *available at* <https://www.krispykreme.com/menu/doughnuts/original-glazed-doughnut>.

160. Further, the Scientific Report of the 2020 Dietary Guidelines Advisory Committee recommended 6% or less of calories come from added sugar. And that percentage “represent[s] [the] relatively rare scenario[] where individuals consume only recommended amounts of nutrient-dense foods and beverages and no energy from alcohol.”¹¹⁶ However, after reviewing comments, including from industry members, FDA ultimately adopted a higher, 10% recommended daily limit, which it applied to an assumed 2,000 calorie diet, to arrive at the 50 gram daily value reflected in nutrition or supplement facts panels. Thus, the FDA-mandated nutrition or supplement facts panel does not reflect the views of the scientific community regarding the appropriate limit for added sugar consumption, nor even the full picture of the FDA’s position on the issue.

V. The Metamucil Labeling Violates New York and Federal Law

161. “New York . . . broadly prohibit[s] the misbranding of food in language largely identical to that found in the FDCA.” *Ackerman v. Coca-Cola Co.*, 2010 WL 2925955, at *4 (E.D.N.Y. July 21, 2010). “New York’s Agriculture and Marketing law . . . incorporates the FDCA’s labeling provisions found in 21 C.F.R. part 101.” *Ackerman*, 2010 WL 2925955, at *4 (citing N.Y. Comp. Codes R. & Regs. tit. 1, § 259.1).

162. The Metamucil Products’ labeling statements violate the FDCA and its New York state law equivalent.

163. First, the challenged claims are false and misleading for the reasons described herein, in violation of 21 U.S.C. § 343(a), which deems misbranded any food whose “label is

¹¹⁶ Scientific Report of the 2020 Dietary Guidelines Advisory Committee, Part D Chapter 12: Added Sugars at p.16, *available at* <https://www.dietaryguidelines.gov/2020-advisory-committee-report>.

false or misleading in any particular.” P&G accordingly also violated New York’s parallel provision of the Agriculture and Marketing law. *See* N.Y. Agric. Mkts. Law § 201.

164. Second, despite making the challenged claims, P&G “fail[ed] to reveal facts that are material in light of other representations made or suggested by the statement[s], word[s], design[s], device[s], or any combination thereof,” in violation of 21 C.F.R. § 1.21(a)(1). Such facts include that the Metamucil Products contain lead and the detrimental health consequences of consuming the Metamucil Products as a result their lead content. For the Metamucil Made With Real Sugar Products, such omitted facts include the detrimental health consequences of consuming the Made With Real Sugar Products at typical levels, including negatively impacting “Blood Sugar Levels,” “Appetite Control,” and “Digestive Health,” and the detrimental health consequences of consuming the Made With Real Sugar Products at typical levels including increased risk of metabolic disease, cardiovascular disease, type 2 diabetes, liver disease, obesity, high blood triglycerides and cholesterol, hypertension, and death, which would be material to a consumer choosing a fiber supplement.

165. Third, P&G failed to reveal facts that were “[m]aterial with respect to the consequences which may result from use of the article under” both “[t]he conditions prescribed in such labeling,” and “such conditions of use as are customary or usual,” in violation of § 1.21(a)(2). P&G failed to disclose both (1) the detrimental health consequences likely to result from the usual consumption of the Products in the customary and prescribed manners, including regular consumption of the standard serving size and (2) the detrimental health consequences of consuming the Metamucil Products at typical levels on “Blood Sugar Levels,” “Appetite Control,” and “Digestive Health.” This is especially true because P&G, through a variety of means, encourages consumers to ingest Metamucil Made With Real Sugar multiple times per day.

166. Fourth and finally, P&G has misbranded its Metamucil Products in violation of the Agriculture Marketing Law by failing to disclose the presence of lead on the products' labels as required by 21 U.S.C. § 343, which states that food is misbranded “unless its label bears . . . the common or usual name of each . . . ingredient.” Under this regulation, food manufacturers like P&G are required to list all ingredients in a food, unless those ingredients are subject to an exemption from this requirement. Because lead is not subject to any exemption under applicable law, but P&G did not list lead as an ingredient—and in fact its website expressly disclaimed using lead as an ingredient—P&G misbranded the Metamucil Products.

VI. Plaintiff's Purchase, Reliance, and Injury

167. Plaintiff Regina Pellegrino purchased Metamucil Made With Real Sugar Orange flavor starting in or around early 2020, with her last purchase in approximately mid- to late-2022. Plaintiff usually made her purchases from CVS in Thornwood, New York.

168. In purchasing Metamucil Made With Real Sugar, Plaintiff read and relied on claims that suggested the Products were healthy and safe for consumption and would provide the advertised health benefits when taken as directed, including P&G's representations that the Products would promote appetite control, healthy blood sugar levels, and digestive health, are doctor recommended, should be taken multiple times daily, and have been sealed for safety. These claims, however, were and are deceptive because the Metamucil Products contain unsafe levels of lead. Moreover, regular consumption of the Made With Real Sugar Products actually decreases appetite control, harms blood sugar levels, and damages digestive and overall health.

169. When purchasing Metamucil Made With Real Sugar, Plaintiff was looking for a healthy, safe option, that provided the advertised health benefits, and believed that was what she was receiving. Plaintiff would have avoided any product she knew contained unsafe levels of

toxic heavy metals, like lead, or contained amounts of sugar that would decrease appetite control, and harm blood sugar levels and digestive health. Plaintiff likewise would have avoided any product she knew could increase her risk of inhibited neurological function, anemia, kidney damage, a compromised immune system, seizures, coma, metabolic disease, cardiovascular disease, type 2 diabetes, liver disease, obesity, high blood triglycerides and cholesterol, hypertension, and death. Plaintiff relied on P&G's omission of this material information in deciding to purchase Metamucil Made With Real Sugar.

170. Plaintiff is not a nutritionist, food expert, or food scientist, but rather a lay consumer who did not have the specialized knowledge that P&G had regarding the impact of the nutrients present in Metamucil. At the time of purchase, Plaintiff was unaware of the extent to which consuming added sugar in the amounts found in Metamucil Made with Real Sugar adversely affects blood sugar levels, digestive health, appetite control, and overall health, and what amount might have such an adverse effect.

171. Plaintiff acted reasonably in relying on the challenged labeling claims, which P&G intentionally placed on the Metamucil Products' labeling with the intent to induce average consumers into purchasing the Products.

172. Plaintiff acted reasonably in purchasing the Products, whose labels did not disclose the presence, or even the risk of the presence, of unsafe levels of added sugar and lead, and in fact conveyed to reasonable consumers that the Products are healthy and safe for consumption.

173. Metamucil costs more than similar products without misleading labeling and would have cost less absent P&G's false and misleading statements and omissions.

174. Plaintiff paid more for the Products, and would only have been willing to pay less, or unwilling to purchase them at all, absent P&G's affirmative health and safety statements, as

well as its omissions regarding the lead content and health effects of regularly consuming the amount of sugar in the Made With Real Sugar Products, as described herein.

175. Plaintiff would not have purchased the Metamucil Products had she known they contained unsafe levels of lead, and would not have purchased Metamucil Made With Real Sugar had she known that regularly consuming the amount of sugar in those Products would decrease appetite control, harm blood sugar levels, and harm digestive and overall health.

176. Plaintiff would not have purchased the Metamucil Made With Real Sugar if she had known it was misbranded pursuant to New York and FDA regulations, or that it contained unsafe levels of toxic lead in the amounts found in the product.

177. Through the misleading labeling claims and omissions, P&G was able to gain a greater share of the fiber supplement market than it would have otherwise and to increase the size of the market.

178. For these reasons, the Metamucil Products were worth less than what Plaintiff and other Class Members paid for them.

179. Plaintiff and other Class Members lost money as a result of P&G's misrepresentations, omissions, and unfair business practices in that they did not receive what they paid for when purchasing Metamucil Products.

180. Plaintiff still wishes to purchase fiber supplement products and continues to see Metamucil at the stores in which she regularly shops. She would purchase Metamucil in the future if the products were healthy and safe for consumption and provided the specific health benefits represented. But unless P&G is enjoined in the manner Plaintiff requests, she may not be able to reasonably determine whether the Products contain lead, or whether the Products have been reformulated to provide the promised health benefits. For example, although the type and amount

of fiber in the Metamucil Made With Real Sugar is currently insufficient to counteract the negative health consequences of their added sugar content, changes to the composition, processing, and manufacturing of Metamucil Made with Real Sugar, not evident upon examination of the product labels, could conceivably change its effect on the body.

181. Plaintiff would purchase Metamucil again if she could trust that P&G's representations were true and not false or misleading, and that the absence of a disclaimer regarding lead meant the issue had been addressed such that the Metamucil Products no longer contained harmful amounts of the heavy metal. Absent an injunction, however, Plaintiff will be unable to trust the representations on Metamucil when she encounters them in the marketplace.

182. Plaintiff's legal remedies are inadequate to prevent these future injuries.

CLASS ACTION ALLEGATIONS

183. While reserving the right to redefine or amend the class definition prior to or as part of a motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23, Plaintiff seeks to represent a class of all persons in New York (the "Class"), who, at any time from three years preceding the date of the filing of this Complaint to the time a class is notified, purchased one or more Metamucil Products (as defined herein) for individual household use, and not for resale.

184. The members in the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all Class Members in a single action will provide substantial benefits to the parties and Court.

185. Questions of law and fact common to Plaintiff and the Class include:

a. Whether, through labeling and advertising the Metamucil Products, P&G communicated a message that the products are generally healthy and safe to consume;

b. Whether, through labeling and advertising Metamucil Made With Real Sugar, P&G communicated a message that the product supports appetite control, healthy blood sugar levels, and digestive health;

c. Whether those messages were material, or likely to be material, to a reasonable consumer, or whether P&G had reason to believe that they were;

d. Whether the Metamucil Products contain amounts of lead that would be material to a reasonable consumer;

e. Whether the Metamucil Products contain unsafe amounts of lead;

f. Whether Metamucil With Real Sugar contains an unhealthy amount or proportion of added sugar.

g. Whether the challenged claims are false, misleading, or reasonably likely to deceive a reasonable consumer;

h. Whether P&G was under a duty to disclose information about the Metamucil Products' lead content;

i. Whether P&G omitted material information about Metamucil Products' lead content;

j. Whether P&G was under a duty to disclose information about the health effects of regularly consuming the amount of sugar in Metamucil Made With Real Sugar;

k. Whether P&G omitted material information about the health effects of regularly consuming the amount of sugar in Metamucil Made With Real Sugar;

l. Whether P&G's omissions were material, or likely to be material to a reasonable consumer;

m. Whether P&G's omissions were likely to deceive a reasonable consumer;

- n. Whether P&G was unjustly enriched;
- o. Whether Plaintiff and other Class Members are entitled to monetary damages and the measure of those damages;
- p. Whether Plaintiff and other Class Members are entitled to restitution, disgorgement and/or other equitable and injunctive relief, and its proper scope; and
- q. Whether Plaintiff and other Class Members are entitled to attorneys' fees, and the proper amount.

186. These common questions of law and fact predominate over questions that affect only individual Class Members.

187. Plaintiff's claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to P&G's conduct. Specifically, all Class Members, including Plaintiff, were subjected to the same misleading and deceptive conduct when they purchased Metamucil Product and suffered economic injury because the products are misrepresented. Absent P&G's business practice of deceptively and unfairly labeling the Metamucil Products, Plaintiff and Class Members would not have purchased them or would have paid less for them.

188. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation, and specifically in litigation involving the false and misleading advertising of foods and beverages.

189. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class Member is small, such that, absent representative litigation, it would be infeasible for Class Members to redress the wrongs done to them.

190. P&G has acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

191. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unfair and Deceptive Business Practices, N.Y. Gen. Bus. L. § 349

(On Behalf of the New York Subclass)

192. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

193. During the Class Period, P&G carried out a plan, scheme and course of conduct which was consumer oriented.

194. P&G's conduct constitutes deceptive acts or practices or false advertising in the conduct of business, trade, or commerce or in the furnishing of services in New York which affects the public interest under N.Y. Gen. Bus. L. § 349.

195. As alleged herein, P&G engaged in, and continues to engage in, deceptive acts and practices by advertising, marketing, distributing, and selling the Metamucil Products with false or misleading claims and representations, and deceptive omissions.

196. As alleged herein, by misbranding the Metamucil Products, P&G engaged in, and continues to engage in, unlawful and deceptive acts and practices.

197. P&G's conduct was materially misleading to Plaintiff and the New York Subclass.

198. As a direct and proximate result of P&G's violation of N.Y. Gen. Bus. L. § 349, Plaintiff and the New York Subclass were injured and suffered damages.

199. The injuries to Plaintiff and the New York Subclass were foreseeable to P&G and, thus P&G's actions were unconscionable and unreasonable.

200. P&G is liable for damages sustained by Plaintiff and the New York Subclass to the maximum extent allowable under N.Y. Gen. Bus. L. § 349, actual damages or \$50 per unit, whichever is greater.

201. Pursuant to N.Y. Gen. Bus. L. § 349(h), Plaintiff and the New York Subclass seek an Order enjoining P&G from continuing to engage in unlawful acts or practices, false advertising, and any other acts prohibited by law, including those set forth in this Complaint.

SECOND CAUSE OF ACTION

False Advertising, N.Y. Gen. Bus. L. § 350

(On Behalf of the New York Subclass)

202. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

203. P&G has engaged and is engaging in consumer-oriented conduct which is deceptive or misleading in a material way (both by affirmative misrepresentations and by material omissions), constituting false advertising in the conduct of any business, trade, or commerce, in violation of N.Y. Gen. Bus. L. § 350.

204. As a result of P&G's false advertising, Plaintiff and Subclass Members have suffered and continue to suffer substantial injury, including damages, which would not have occurred but for the false and deceptive advertising, and which will continue to occur unless P&G is permanently enjoined by this Court.

205. Plaintiff and the New York Subclass seek to enjoin the unlawful acts and practices described herein, and to recover their actual damages or \$500 per unit, whichever is greater, and reasonable attorney fees.

PRAYER FOR RELIEF

206. Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for judgment against P&G as to each and every cause of action, and the following remedies:

- a. An Order declaring this action to be a proper class action, appointing Plaintiff as Class Representative, and appointing Plaintiff's undersigned counsel as Class Counsel;
- b. An Order requiring P&G to bear the cost of Class Notice;
- c. An Order requiring P&G to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;
- d. An Order requiring P&G to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgment interest thereon;
- e. An Order requiring P&G to pay compensatory, statutory, and punitive damages as permitted by law;
- f. An award of attorneys' fees and costs; and
- g. Any other and further relief that Court deems necessary, just, or proper.

JURY DEMAND

207. Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: December 6, 2023



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